

Environmental Protection

Water Supply Administration

Private Well Testing Act Rules

Adopted New Rules:	N.J.A.C. 7:9E
Proposed:	May 6, 2002 at 34 NJR 1606(a)
Adopted:	August 23, 2002, by Bradley M. Campbell, Commissioner Department of Environmental Protection
Filed:	August 23, 2002 as R. _____ 2002 d _____ with substantive and technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3)
Authority:	N.J.S.A. 58:12A-26 et seq.
DEP Docket Number:	08-02-04/284
Effective Date:	September 16, 2002
Expiration Date:	September 16, 2007

The Department is adopting new rules, at N.J.A.C. 7:9E, in accordance with the provisions of the Private Well Testing Act (PWTA), N.J.S.A. 58:12A-26 et seq., which was enacted into law on March 23, 2001. The PWTA applies to buyers, sellers and lessors of certain real property as follows:

1. Effective September 14, 2002, all contracts of sale for any real property the potable water supply for which is a private well located on the property, or for any other real property the potable water supply for which is a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, shall include a provision requiring, as a condition of the sale, the testing of that water supply for certain parameters. Closing of title on the sale of the real property shall not occur unless both buyer and seller have received and reviewed a copy of the water test results.

2. By March 14, 2004, the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, shall test that water supply for certain parameters. Testing is required at least once every five years and thereafter. Within 30 days after receipt of the test results, the lessor shall provide a written copy of the results to each rental unit on the property. The lessor must also provide a written copy of the most recent test results to each new lessee.

The PWTA requires the Department to promulgate rules governing: 1) the additional parameters for which testing is required; 2) requirements for sample collection and analysis; 3) reporting of test results by certified laboratories; and 4) criteria for notification of nearby property owners.

Summary of hearing officers recommendation and agency response:

On May 6, 2002, the Notice of Proposal for these new rules was published concurrently with a notice of proposed amendments to N.J.A.C. 7:18, the Department's Regulations Governing the Certification of Laboratories and Environmental Measurements. (See 34 N.J.R. 1613(a).) Public hearings concerning both rulemaking actions were held on June 4, 2002 at the Gloucester County Office Building, Clayton, NJ and on June 6, 2002 at the Pequest Trout Hatchery and Natural Resources Education Center Auditorium, Oxford, NJ. Barker Hamill, Chief, Bureau of Safe Drinking Water served as hearing Officer for both hearings. Mr. Hamill recommended that the proposed rules be adopted with the changes described herein.

A record of the public hearings is available for inspection in accordance with applicable law by contacting:

New Jersey Department of Environmental Protection
Office of Legal Affairs
Attention Docket Number 08-02-04/284
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Comments concerning both this rulemaking action and the proposed amendments to N.J.A.C. 7:18 were presented at both public hearings. A Notice of Adoption concerning the proposed amendments to N.J.A.C. 7:18 is being published elsewhere in this New Jersey Register. A summary of the comments received at the public hearings pertaining to proposed amendments to N.J.A.C. 7:18 and the Department's responses are set forth in that separate Notice of Adoption.

Summary of public comments and agency responses:

The following persons submitted comments either in writing or orally on the proposal:

1. Robert Barrett, Aqua Pro-Tec Laboratories
2. John W. Beckley, Hunterdon County Department of Health
3. Marcia Chiaricio, Sussex County Health Department
4. Charles F. Conyers
5. Cristianna Cooke-Gibbs, Washington Township Health Department
6. Daniel Coranoto, Hampton Township, Sussex County

7. James R. Doherty, Township of Wantage, Sussex County
8. William Dressel, Jr., New Jersey League of Municipalities
9. Clem Fernando, Randolph Township Health Department
10. Sharon Finlayson, South Jersey Work on Waste
11. Michael Furrey, Agra Environmental Services
12. Jarrod Grasso, New Jersey Association of Realtors
13. Mark Guarino, New Jersey Association of County Health Officers
14. John A. Hawk, Warren County Health Department
15. Kenneth Hawkswell, Township of West Milford Department of Health
16. David Henry, Township of Montgomery Department of Health, Environment, and Vital Statistics, Somerset County
17. Thomas Hines, QC Laboratories
18. Edward A. Hogan
19. Rob Hulit, Mount Holly MUA
20. Richard Hunt
21. Robert J. Ingenito, Ocean County Board Of Health
22. Edward Knorr, Green Action Alliance
23. Jeffry H. Koenig
24. Stephen Kroemer, Water Works Laboratory
25. Tracye McArdle, Atlantic County Division of Public Health
26. Michelle McIntyre, New Jersey Environmental Health Association
27. Latish Menghani, Vineland Environmental Labs
28. Patrick T. Mottola
29. Miriam Murphy, Tewksbury Township Environmental Commission
30. Anne Napolitano, Schoor DePalma, Inc.
31. Jane Nogaki, New Jersey Environmental Federation
32. John A. Orlowski
33. Gene S. Osias, Township of Vernon Health Department
34. Norman Primost, New Jersey Ground Water Association
35. Willie Richter, Re/Max Realtors
36. Mark Riether, Morning Star Enterprises
37. William Simmons, Monmouth County Health Department
38. Stephen Ward Smithson
39. Julia Somers, Great Swamp Watershed Association
40. David N. Speis, Accutest Laboratories
41. David N. Speis, Environmental Laboratory Advisory Committee
42. Thomas Spiesman
43. Robert Stahlhut, Mt. Olive Township Health Department
44. Ronald E. Steinvurzel
45. Faith Stetson, South Jersey Coalition Against Toxics
46. Kenneth G. Sumner, Middle-Brook Regional Health Commission
47. Linda Tatro, Environmental Laboratory Advisory Committee
48. Robert Uhrik, South Brunswick Township
49. Maria Whittingham, Gloucester/Salem Counties Board of Realtors
50. Richard Wilson, Frankford Township Board of Health

51. Nancy Wittenberg, New Jersey Builders Association

General Comments:

1. COMMENT: The regulations are good, and need to be implemented quickly. (22)
RESPONSE: The Department appreciates this comment in support of the rules.
2. COMMENT: Is there a need for this rule? When property is being sold, both attorneys of seller and buyer have tests done to check wells and septic systems. Your rule is an added step that is not needed. (6)
RESPONSE: The Department is required to promulgate these rules under the PWTA, N.J.S.A. 58:12A-26 et seq. Further, it is the Department's experience that well testing is not routinely performed by both buyers and sellers during all real estate transactions.
3. COMMENT: We are in favor of a state-wide regulation that defines uniform private well testing requirements. This regulation will help protect the public's health by providing information on the quality of their potable water source, and it will also provide a mechanism to collect data regarding the State's water quality. This data can also be utilized for contamination plume identification and remediation. (46)
RESPONSE: The Department appreciates this comment in support of the rules. The rules will provide information that can be used by the Department and others to learn more about water quality in New Jersey. The Department will try to ensure that the information collected under the rules is shared as widely as possible, in accordance with the confidentiality provisions in the PWTA.
4. COMMENT: We conceptually support these rules, and commend the Department for its efforts to protect the public's health as well as to gather important information about the quality of New Jersey's groundwater supplies. (25)
RESPONSE: The Department appreciates this comment in support of the rules.
5. COMMENT: I commend the Department for its time, effort, and foresight in crafting this legislation. Water quality issues in New Jersey are an important aspect of public health and should be addressed. (26)
RESPONSE: The Department appreciates this comment in support of the rules.
6. COMMENT: There may be possible conflicts between the PWTA and other requirements. We would like to incorporate ordinances to involve the state, and there are confidentiality problems. (43)
RESPONSE: While the concern raised by the commenter is beyond the scope of these rules, the Department notes that in accordance with the PWTA and these rules, the local health authority is not pre-empted from enacting ordinances within the scope of its authority. Any ordinances must be consistent with N.J.S.A. 58:12A-31, which states that, notwithstanding any law to the contrary, the water test results shall be kept confidential by State, county and local agencies.

7. COMMENT: We generally support the two new rules dealing with drinking water wells. These regulations, which deal with the testing and reporting requirements of private wells, as well as certain public wells, will greatly enhance the protection offered to buyers and renters of property in New Jersey. Clean, safe drinking water is one of our most important natural resources and the Department of Environmental Protection is to be commended for its continuing efforts to protect the health and welfare of the residents of our state by proposing these rules. (45)
RESPONSE: The Department appreciates this comment in support of the rules.
8. COMMENT: The Private Well Testing Act fails to address many key areas relevant to potable drinking water. It appears to be a mechanism to collect raw ground water data at the expense of property owners and depends on local health personnel for interpretation. I trust that the Department will consider the issues discussed herein so as to better reflect a public health focus. (5, 43)
RESPONSE: The PWTA is focussed on providing information to buyers and sellers of real estate, and to landlords and tenants, in order to enable them to make focussed decisions regarding real estate transactions. The PWTA increases the information available to the public about their well water quality, thus increasing the public's ability to act to make sound decisions and to act to protect their water.
9. COMMENT: DEP deserves credit for providing new protections for migrant farm workers and non-residential private well consumers. These two pools of people got scant attention during the legislative process so it is nice to see the benefits that will accrue to them noted. (31, 39)
RESPONSE: The Department appreciates this comment in support of the rules.
10. COMMENT: In the actual rules, there is an absence of the mandate to test and disclose. (31, 39)
RESPONSE: Please see the response to comment 15, below.
11. COMMENT: The language of N.J.S.A. 58:12A-2b, which requires water testing of private wells, should be included in N.J.A.C. 7:9E-1.21. This section specifically states: "Closing of title on the sale of the real property shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results. At closing, the buyer and seller both shall certify in writing that they have received and reviewed the water test results." If the proposed regulations are adopted without subsection 2b, a delay in--or even the halt of -- the closing process will occur. Without this provision, a gray area could materialize, making way for confusion on the part of the seller, the buyer, the real estate licensee or the attorney involved in the real estate transaction. We urge the proposed regulations be amended to reflect the statute verbatim. (12)
RESPONSE: Please see the response to comment 15, below.

12. COMMENT: There is no penalty section here. What is the DEP's response going to be if people just ignore this act? With no penal section, what will be the ramification if someone chooses not to heed this law? (5, 26)
RESPONSE: Please see the response to comment 15, below.
13. COMMENT: Neither the enabling statute, nor these regulations, provide any sort of enforcement mechanism. (In fact, these regulations do not actually require anyone to do anything-they merely refer to the Act.)
RESPONSE: Please see the response to comment 15, below.
14. COMMENT: Can a buyer and seller choose not to comply with these regulations? If not, why not? Can the Department rescind a contract if these regulations are not complied with? Can a third party neighbor file an Environmental Rights Act claim, and force the Department to rescind a contract? (18, 23, 28, 32, 38, 42, 44)
RESPONSE: Please see the response to comment 15, below.
15. COMMENT: N.J.A.C. 7:9E-1.2: The enabling statute is ambiguous with regard to what real estate transactions are covered. Does a "contract of sale" include an inheritance, a gift, a corporate reorganization, etc.? The Department should state with specificity what kinds of transactions are, and are not, covered by these regulations. (18, 23, 28, 32, 38, 42, 44)
RESPONSE: Response to comments 10 through 15: The PWTA imposes a limited directive on the Department. It requires the Department to promulgate rules governing: 1) the additional parameters for which testing is required; 2) requirements for sample collection and analysis; 3) reporting of test results by certified laboratories; and 4) criteria for notification of nearby property owners. The rules do not include the commenter's recommended language because this goes beyond the scope of the rules adopted herein. Defining the types of real estate transactions for which testing must be performed, establishing penalties for failure to test, and determining the rights of third parties, are all beyond the scope of the rules adopted herein.
16. COMMENT: Who is going to keep track of rental properties, and how will rental properties be tracked? If you have three or more units, multi-family dwellings, maybe you can have a five-year inspection on water testing but they do not come out with anything that shows any tracking. (43)
RESPONSE: Please see the response to comment 19, below.
17. COMMENT: What regulatory agency will be tracking the requirement that lessors sample every 5 years? (37)
RESPONSE: Please see the response to comment 19, below.
18. COMMENT: How are small rental units (1-4) going to be addressed? (37)
RESPONSE: Please see the response to comment 19, below.
19. COMMENT: The proposal requires landlords to test water once every 5 years and provide the results to their tenants. Many townships do not know the properties that are

leased. How will this requirement be monitored? If a township does not adopt the State Housing Code and a complaint about this required notification is received by the tenant, how will we require a landlord to correct any water problems on his property? (26)

RESPONSE: Response to comments 16 through 19: As noted above in the Response to Comments 10 through 15, the PWTA imposes a limited directive upon the Department. The monitoring, enforcement or tracking of the requirement to test wells for leased properties is beyond the scope of these rules. The Department is embarking on an extensive public education program with other local and State agencies, including the Department of Community Affairs, to inform both lessors and lessees of their responsibilities and rights under the PWTA. The PWTA does not require remediation, but is focused on increasing the information available to buyers and sellers of property, as well as lessors and lessees, so that they can make well-informed decisions regarding real estate transactions.

20. COMMENT: What about migrant farms? They are generally not as "plugged into" the system. How is "rent out camps directly or indirectly for migrant farmers" defined? Their current sampling requirements are limited to annual coliform, nitrates and chlorine residual. (37)

RESPONSE: Defining which property owners are subject to the PWTA testing requirements is beyond the scope of these rules. As noted above in the Response to Comments 10 through 15, the PWTA imposes a limited directive upon the Department. The Agriculture Industry Impact Statement at 34 NJR 1608 discusses the potential impact of these rules on any farmers who must obtain a private well test in accordance with this law. The Department intends to provide information regarding the Private Well Testing Act and rule requirements to other State agencies, including those which regulate farm camps, as part of its education and outreach program.

21. COMMENT: As the law applies to lessors of seasonal rentals, the regulations should contain language to clarify test result notification. The NJ Department of Community Affairs defines a seasonal rental as a rental premises that is leased for a period of 125 days or less. In New Jersey, our shore areas generate a high volume of seasonal renters every year. It is not clear whether the lessor should submit a copy of the results to the lessee. We recommend that the DEP permit a lessor to post the test results in a conspicuous location within the rental property for the lessee's review. We believe the posting of water test results to be most conducive to proper renter notification for seasonal rentals. (12)

RESPONSE: The notification of renters is addressed specifically by the PWTA and is beyond the scope of these rules. The PWTA requires that "Within 30 days after receipt of the test results, the lessor shall provide a written copy thereof to each rental unit on the property. The lessor shall also provide a written copy of the most recent test results to a new lessee of a rental unit on the property." 58:12A-32.

22. COMMENT: This proposal provides no requirement for compliance with an MCL or a primary standard. To protect the public's health, this proposal must require compliance with primary standards prior to the transfer of title. (26)

RESPONSE: The PWTA does not require remediation, but is focussed on increasing the information available to buyers and sellers of property, as well as lessors and lessees, so that they can make well-informed decisions regarding real estate transactions. Therefore, requiring compliance with MCLs or primary standards prior to transfer of title is beyond the scope of the PWTA rules adopted herein.

23. COMMENT: Is the New Jersey Department of Health and Senior Services now working closely with the DEP to produce health-based fact sheets with explanations for homeowners on unregulated or tentatively identified compounds as well as regulated substances? How will the NJDHSS be consulted over the phone etc. when these questions arise? Is the NJDHSS ready to become actively involved in this? (37)

RESPONSE: The Department currently works closely with the New Jersey Department of Health and Senior Services to produce fact sheets on many aspects of drinking water quality, and will continue to do so. However, the PWTA does not require testing for unregulated substances, and therefore the Department does not at this time plan to develop specific fact sheets on this subject. The Department has developed a PWTA website (www.state.nj.us/dep/pwta) to assist well owners in finding information about all aspects of the PWTA. As the need arises, questions regarding the degree and manner of involvement of other agencies concerning these issues will be addressed on a case-by-case basis.

24. COMMENT: How will Site Remediation take over all investigations referred to them by CEHA agencies when they have evolved into Immediate Environmental Concerns? (37)

RESPONSE: The Department does not plan to make any distinction between cases of Immediate Environmental Concern that are discovered through the PWTA program and those brought to the Department's attention through other means, although it is required to comply with the confidentiality provisions of the PWTA. For cases of Immediate Environmental Concern, the Department will continue to respond to situations involving a contaminated water supply consistent with N.J.A.C. 7:1J.

25. COMMENT: Do the reporting requirements at N.J.A.C. 7:9E-3.1 satisfy the notification obligations under the Spill Act? If not, who has the responsibility to notify the Department? (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The reporting requirements at N.J.A.C. 7:9E-3.1 do not satisfy the notification obligations under the Spill Act. First, notification under the Spill Act is the first step in the remediation process, but some property owners may choose not to pursue remediation, or may choose to delay it. Second, when the Department is notified of contamination under the Spill Act, this triggers certain deadlines for action. If these deadlines are not met, a property owner may be unable to obtain remediation funding assistance.

26. COMMENT: If a well fails, will the department notify the person(s) requesting the test that a verification sample must be procured prior to notification to Spill Fund? (21)

RESPONSE: Please see the response to comment 27, below.

27. COMMENT: How will the Spill Fund be activated? (37)

RESPONSE: Response to comments 26 and 27: The Department will provide information on its PWTA website (www.state.nj.us/dep/pwta) regarding how to submit a claim to the Spill Fund program. The process will be in accordance with that program's rules at N.J.A.C. 7:1J. This information will also be included on the Private Well Water Test Reporting Form, which the laboratories provide to the person requesting the test. The well owner or the health department can pursue remedies through the Spill Fund if they deem it appropriate.

28. COMMENT: If a well fails, will this halt the real estate transaction? (36)

RESPONSE: The PWTA does not address the consequences of a failed well test, beyond the information-sharing requirements in the rules. While a buyer or seller may decide to halt the transaction based on the results of a well test, neither the Act nor the rules require this.

29. COMMENT: If there is a test result that fails, whom do I call to fix the problem with the well? Will there be certified people? (35)

RESPONSE: The Department has no plans to establish a program for certifying remediation contractors. The Department will, however, provide information regarding remediation funding alternatives, in accordance with N.J.A.C. 7:9E-3.1(a)1xv. This information will be provided on the form upon which the laboratory provides the well test results, and on the PWTA website at www.state.nj.us/dep/pwta.

30. COMMENT: We do not think the voluntary guidance is meaningful, so when the local health department gets the report, it is between the buyer and seller of the property. There is nothing that says that you can do anything to resolve the problem. I do not agree with that. (43)

RESPONSE: The PWTA requires the Department to promulgate rules governing: 1) the additional parameters for which testing is required; 2) requirements for sample collection and analysis; 3) reporting of test results by certified laboratories; and 4) criteria for notification of nearby property owners. The PWTA is designed to provide information to the buyer and seller and lessor and lessee about the well water quality, so that they can make well-informed choices regarding real estate transactions.

31. COMMENT: If the test fails, will the homeowner get some help in the remediation or does he have to shoulder all the cost? (35)

RESPONSE: While neither the PWTA nor these rules require remediation in the event of a well test failure, should a homeowner choose to pursue remediation of a well with a problem, there are various possible sources of funding assistance. The Department has included information on remediation funding alternatives on its PWTA website at www.state.nj.us/dep/pwta. In addition, the form used by the laboratories to report test results will provide information on remediation funding alternatives, as required at N.J.A.C. 7:9E-12A-30.

32. COMMENT: What happens to the people that are using lake water as their household water with the property transactions? Are they all going to have to have wells? (5)
RESPONSE: Please see the response to comment 34, below.
33. COMMENT: The law seems to only address well water sources. There are a lot of transfers of titles that are going to be serviced by sources other than wells. If you want data on wells, why do not you also want data when there is a transfer of titles with cisterns, springs, or unapproved sources of water? Why are we not taking this opportunity to make sure that these unapproved sources of water are replaced with a well at the time of resale? (5, 35)
RESPONSE: Please see the response to comment 34, below.
34. COMMENT: This proposal is specific to individual water supplies served by a well. As defined in the regulation, a "well" does not include cisterns, springs, or shallow dug wells, many of which still exist. A transfer of title for a home would be an excellent time to test and possibly replace these substandard systems. In addition, the requirement for a landlord to test the leased property every five years does not offer adequate sampling on homes that are often not well maintained. (26)
RESPONSE: Response to comments 32 through 34: The commenters are correct that the rules do not govern cisterns, springs, lake water, or shallow dug wells that do not meet the definition of a well at N.J.A.C. 7:9E-1.2. The PWTA, at N.J.S.A. 58:12A-27 and N.J.S.A. 58:12 A-32, describes those water supplies which are subject to testing requirements. The type of water supply covered by the PWTA is wells, and therefore the commenters' suggestions are beyond the scope of the rules adopted herein. See N.J.S.A. 58:12A-27.
35. COMMENT: The regulations should provide a reasonable time frame from the date of the test to the delivery of the results. Due to the nature of the real estate business, time often is of the essence. It is most difficult for property owners, attorneys and licensed real estate professionals to coordinate closings, for there are many variables involved in the sales process. Add to it delayed water test results, and closings will become even more complicated. (12)
RESPONSE: The Department does require at N.J.A.C. 7:9E-3.1(a)1 that the laboratory notify both the Department and the client within five business days after completion of the analysis. This is based upon PWTA provisions at N.J.S.A. 58:12A-30c. The time between the collection of the sample and the start of any analysis is dictated by USEPA Safe Drinking Water rules.
36. COMMENT: I hear that there is going to be language that is mandatory, to be put into our contracts of sale verbatim. Do you know if that language has been drawn up yet? (49)
RESPONSE: It appears that the commenter is referring to the PWTA requirement at N.J.S.A. 58:12A-27b that buyers and sellers certify in writing that they have received and reviewed the test results. The Department has no plans to provide model contract language.
37. COMMENT: We understand the tight time line we are operating under, given the statutory deadline and limited resources, so we support adopting the Rule with any

technical changes to meet the statutory deadline and proposing a supplement rule to be adopted expeditiously to those changes that it deems substantive. (31, 39)

RESPONSE: The Department is adopting the rule with minor technical and substantive changes. The Department has no plans to propose a supplemental rule at this time.

38. COMMENT: What are DEP's plans to comply with the public education and information program provisions of section 8 (N.J.S.A.58:12A-33) of the Private Well Testing Act? (31, 39)

RESPONSE: The Department has a long history of providing public education on the issue of drinking water quality, including information on private potable wells. Over the years, the Department has worked collaboratively with the New Jersey Department of Health and Senior Services, Rutgers Cooperative Extension Service, Rutgers University, and other entities. Building on this, the Department has developed a website exclusively focused on the PWTA program (www.state.nj.us/dep/pwta), which includes lists of certified laboratories that perform testing, drinking water standards, educational materials regarding how to interpret water test results, as well as links to other Department programs, other State and Federal government agencies, and related sources of information. The Department has historically worked with local governments to better understand the types of public information needed, and to provide effective public outreach. As part of PWTA implementation, the Department will conduct coordination meetings with local health officers, work with them to develop form letters, and will partner with them to ensure effective public outreach on the PWTA and its requirements.

39. COMMENT: Implementation will be chaotic unless commenters' concerns have been thoroughly addressed and until the public information and education program specified in Section 8 of the Act has been established. It is unlikely that this will be accomplished by 9/14/02. Therefore, consideration should be given to extending the implementation date. (14)

RESPONSE: The Department agrees that it is important for information to be made available to the general public as well as to professional disciplines whose work will be affected by the PWTA and the PWTA rules. However, the PWTA specifically establishes the dates upon which its provisions become effective. It is not within the scope of these rules to extend the effective dates of the PWTA. To ease the implementation of the PWTA and the PWTA rules, the Department has established a website as well as a direct outreach program. The Department has made every effort to address the concerns raised by the commenters.

40. COMMENT: We request that another public meeting be held in central Jersey or at 401 E. State St. to accommodate central Jersey. (37)

RESPONSE: Please see the response to comment 41, below.

41. COMMENT: Today's meeting is somewhat a disservice to the people because you have no hearing scheduled in Sussex County, where there are many, many wells. I would have preferred to have a meeting at nighttime someplace in the county so that working people could have attended. (50)

RESPONSE: Response to comments 40 and 41: The Department believes that sufficient opportunity for public input on the rule proposal was provided. The Department provided two methods for the public to comment on the rule proposal: through two public hearings and through a 45-day comment period for acceptance of written comments. Further, the rule proposal and the opportunity to comment were advertised on the Department's website, in the New Jersey Register, and in newspapers across the State.

42. COMMENT: We are very pleased that the NJDEP is actively looking to protect potential buyers of realty units that utilize a private well. (21)

RESPONSE: The Department appreciates this comment in support of the rules.

43. COMMENT: Are these laboratories going to be in place by the time this takes place? With a program of this magnitude, you should know that this is going to be in place. (18, 23, 28, 32, 38, 42, 44, 50)

RESPONSE: Please see the response to comment 45, below.

44. COMMENT: There does not appear to be any shortage of labs to do the testing. For example, we know of one lab at UNC-Asheville that has the capacity to do all the arsenic tests for each private well on property sold in every county in NJ each year. (31, 39)

RESPONSE: Please see the response to comment 45, below.

45. COMMENT: N.J.A.C. 7:9E-2.1(d) sets forth a timetable for phasing in the short term 48-hour gross alpha test. N.J.S.A. 58:12A-29 states that the DEP must conduct an annual review to determine if there are a sufficient number of laboratories certified so that results could be produced "at a reasonable cost within 10 days of a request for testing." The DEP is overly optimistic with regard to the number of laboratories that will obtain certification for this analysis. Further, due to the limited number of laboratories certified to do this test, the proposal to amend N.J.A.C. 7:18 acknowledges that it will be difficult to get these tests done in a timely manner and at a reasonable cost. The timeliness issue is of extreme importance when dealing with real estate closings. DEP should add language to the proposal to allow for extending the proposed phase-in period for the short term 48-hour gross alpha test. (4, 51)

RESPONSE: Response to comments 43 through 45: Currently there are over 150 laboratories certified in the Safe Drinking Water Program to conduct the various types of testing required by the PWTA. Over 30 of those laboratories are considered full service laboratories as they are certified in all PWTA testing categories, with the exception of the gross alpha. Many of these full service laboratories have stated to the Department that sufficient capacity exists to accommodate the testing that is anticipated. Certified laboratories have not indicated that adequate laboratory capacity will be a problem. With regard to the 48-hour Rapid Gross Alpha Method, there are currently 14 commercial laboratories certified for the USEPA 900.0 Method, on which the Department's modified 48-hour Rapid Gross Alpha method is based. The Department anticipates that most of these 14 laboratories will seek certification in the 48-hour Rapid Gross Alpha method. Discussions with five of these laboratories indicate the capacity to analyze over 2,000 samples a month. In addition, in order to ensure sufficient time for laboratories to become

certified for the 48-hour rapid gross alpha method and to provide adequate capacity, the PWTA rules phase in the requirement for this type of testing over a period of 18 months. See N.J.A.C. 7:9E-2.1(d).

46. **COMMENT:** For the laboratories, it is going to be difficult to tell the homeowner that you are going to be taking a sample from that location. There should be clarification for the laboratories on how to advise the homeowners that it may be necessary to take two samples, before and after treatment devices. Real estate transfers have time frames. The department needs to clarify the regulation to speed up that process. (11)

RESPONSE: The rules do not require sampling both before and after treatment. The rules require only sampling before treatment. It is true that in some cases some people may wish to have additional samples taken after treatment as well as before it. An example would be where a well owner wishes to demonstrate to potential buyers that a contaminant present in the well water, such as iron, is controlled to acceptable levels by an installed treatment unit. However, the decision as to whether to take an after treatment sample rests solely with the person requesting the test. Furthermore, test results for after-treatment samples will not be reported to the Department. Note that N.J.A.C. 7:9E-2.3 has been revised upon adoption to clarify the locations from which samples must be taken.

47. **COMMENT:** It is considered good practice to confirm a positive result with a retest. The proposed Rule has no provision for confirmatory testing. (14)

RESPONSE: The PWTA requires the Department to promulgate rules governing: 1) the additional parameters for which testing is required; 2) requirements for sample collection and analysis; 3) reporting of test results by certified laboratories; and 4) criteria for notification of nearby property owners. Therefore, requiring confirmatory testing is beyond the scope of these rules.

48. **COMMENT:** Is there a grace period for retesting failed wells, for example, within 10 days? (6)

RESPONSE: The provisions regarding retesting at N.J.A.C. 7:9E-2.3(a)7 have caused some confusion concerning the need to collect additional samples when a well test failure occurs. Since retesting is not required by the PWTA, N.J.A.C. 7:9E-2.3(a)7 has been deleted upon adoption.

49. **COMMENT:** To prevent panic in a neighborhood, will there be time for the owner of a failed well to get repairs and will the local health department have the right to see to it on a local basis? (6)

RESPONSE: The PWTA requires the Department to promulgate rules governing: 1) the additional parameters for which testing is required; 2) requirements for sample collection and analysis; 3) reporting of test results by certified laboratories; and 4) criteria for notification of nearby property owners. Therefore, any actions taken by home owners or local health authorities in response to well test results are beyond the scope of the rules adopted herein.

50. COMMENT: What role will local health departments play in the follow-up activities related to public health in their jurisdictions (their responsibilities are not addressed in the regulations). Will municipal tax assessors be required to provide property owner information to the health department (they are now capable of providing lists of all properties within 200 feet). (37)

RESPONSE: Under N.J.S.A. 58:12A-31 of the PWTA, the Department is required to provide guidance to the local health authority for issuing a general notification to neighboring property owners of a failed well test. This guidance is found in the adopted rules at N.J.A.C. 7:9E-4. In addition, the Department will work with local health departments to develop form letters, and to collaborate on other aspects of PWTA implementation. The responsibilities of local tax assessors are not addressed in the PWTA and are beyond the scope of the rules.

51. COMMENT: The Department requires CEHA Counties (i.e., counties with local health agencies which are certified pursuant to the County Environmental Health Act, N.J.S.A. 26:3A2-21 and have been delegated environmental enforcement authority) who are promulgating or revising ordinances to go through the comment period and adopt the ordinance, then wait an additional 90 days for the Department to approve or reject it. Counties will need to revise their water ordinances in a timely manner so that they can be consistent with the new regulations. Will the Department be addressing issues regarding the timing of the effective date of the PWTA regulations as well as the 90-day Department-comment period on ordinances so that the revised ordinances can be 'fast-tracked'? (37)

RESPONSE: Regarding the effective date of the PWTA, please see the response to Comment 39 above. The commenter states that counties will need to revise their water ordinances in a timely manner; however, neither the PWTA nor these rules impose a need to revise local water ordinances. Therefore, there is no need for the Department to expedite the review of any ordinances the county chooses to revise. The Department will continue to review such ordinances and address these issues in accordance with the 90-day time-table provisions of CEHA.

52. COMMENT: It took some time to get private well testing through the Legislature, while contamination problems continued to surface in private wells throughout the State. These rules are needed to protect human health. No one should be put in the position of unwittingly consuming polluted water, so we want to urge the Department to adopt these rules and to do it expeditiously. (10)

RESPONSE: The Department appreciates this comment in support of the rules.

53. COMMENT: Will there be a list of who is qualified to do the test so we know who to call? (35)

RESPONSE: A list of laboratories certified to conduct the testing required by the PWTA can be obtained from the PWTA website, www.state.nj.us/dep/pwta, or by contacting the Department's Office of Quality Assurance at (609) 292-3950.

54. COMMENT: These proposed regulations are likely to hurt the real estate market, and all jobs based on that market are likely to be hurt as well. Furthermore, because these

regulations will make it difficult for the private home owners to move, these regulations will also diminish the ability of those owners to take new jobs. While testing laboratories will experience an increase in jobs, the net effect will be to reduce employment in New Jersey. Given the negative job impact of these proposed regulations, we suggest that the Department use its influence to convince the State Legislature to repeal the enabling statute. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The PWTA performs a valuable function by ensuring that parties to real estate transactions and well owners will have important information regarding water well quality. In addition, as stated in the Jobs Impact Statement accompanying the proposal, the Department believes that these rules will have a positive impact on employment at certified laboratories, certified well drillers and pump installers, environmental consultants, and sellers of water treatment equipment.

55. COMMENT: The Department underestimates the negative economic impact that these regulations will have. First, would-be sellers of homes with wells that exceed the standards will discover that their property values have diminished, perhaps substantially. This will occur even if the only standards exceeded are for naturally-occurring minerals (iron and manganese) that cannot readily be remediated. Second, would-be sellers will be required to conduct additional testing, and to try to implement remediation, even though many of the constituents being tested for cannot readily be remediated (iron, manganese, lead, mercury and arsenic). In order to sell their homes, homeowners will be forced to seek No Further Action letters from the Department, which will increase transaction time and costs. Third, the current strength of the economy seems to be based largely on the strength of the real estate market. By causing the widespread diminution in private property values, these rules will likely depress the New Jersey real estate market, thereby delaying or preventing any economic recovery. Given the negative economic impact of these proposed regulations, we suggest that the Department use its influence to convince the State Legislature to repeal the enabling statute. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: High levels of iron and manganese, classified as secondary parameters under the safe drinking water regulations, are currently commonly found and easily treated in many private residential wells throughout the State. There is no evidence to suggest that the presence of these minerals in well water diminishes the value of these homes. Nor does the Department believe that well owners will need to obtain No Further Action letters. Currently, the New Jersey Safe Drinking Water Act rules, N.J.A.C. 7:10-12, require testing of basic parameters whenever a new nonpublic water supply is constructed. Further, some local governments also require this testing whenever homes are sold. These potable well testing programs have not resulted in an increase in homeowners obtaining NFA letters.

56. COMMENT: The Private Well Testing Act specifies more extensive testing on existing wells than the Safe Drinking Water Act requires for new private wells. The two laws should have consistent testing requirements. (13, 14)

RESPONSE: The PWTA specifically lists a set of parameters for which testing is required. The required parameters in the PWTA rule are based on the PWTA itself.

Costs to buyers/sellers:

57. COMMENT: The DEP's estimated rate for a single test ranges anywhere from \$450 to \$650, a considerable amount for a great number of people, especially for low-to-middle income families, the parties most impacted by the act. As the State of New Jersey has made private well testing a mandatory condition of sale, property owners have no choice but to proceed with the testing, creating an opportunity for price gouging. To alleviate this potential problem, we are asking the DEP to be vigilant in ensuring that property owners will not be held hostage by high costs associated with the new testing requirements (12, 20)

RESPONSE: The Department has determined that there are a sufficient number of certified laboratories to ensure that there will be competition for well water testing business. This will allow property owners to consider price in choosing a testing laboratory, in order to prevent the type of pricing problems envisioned by the commenter.

58. COMMENT: We believe that contrary to some recent press reports, the cost of the testing and reporting of well water quality will be negligible in comparison to the value of a house, and beneficial, when savings from not being on public water and peace of mind are factored in. (31, 39)

RESPONSE: The Department appreciates this comment in support of the PWTA program.

59. COMMENT: What will be the cost? (6, 35)

RESPONSE: Please see the response to comment 61, below.

60. COMMENT: With respect to the economic impact of the proposed rules, we disagree with the Department's estimated cost of compliance with the Act of \$450 to \$650 per drinking water system. We estimate the collection, transport, analysis, reporting and GPS to cost approximately \$950- \$1050. (30)

RESPONSE: Please see the response to comment 61, below.

61. COMMENT: The Economic Impact Section estimates the cost of compliance with the Private Well Testing Act to be \$450 -\$650 per water system. The proposal does not provide detail as to what this estimate includes. Is it just the analytical costs or are the sampling costs included as well? Where are the costs for the Global Position System Location requirement? (51)

RESPONSE: Responses to comments 59 through 61: Based on consultations with a number of certified laboratories, the Department estimates that the cost to the person requesting the water testing will average between \$450.00 and \$650.00. However, the exact cost of compliance with the PWTA and PWTA rule will depend on a number of factors, including the distance from the property to the laboratory collecting the sample, the number of analytical tests which must be conducted, collection of the GPS coordinates, and the requested turnaround time for analytical results. Because of the wide variations in these conditions, it is impossible for the Department to predict the exact cost of PWTA compliance for each specific property. However, the estimate provided in the Economic

Impact Statement preceding the rule proposal is based on information provided by various certified laboratories around the State. The estimate covers costs for both sampling and analysis. Some of the laboratories that the Department consulted included GPS costs, so the Department estimate does include GPS costs in those cases.

62. COMMENT: The Department's own data shows there are not enough labs to do radiological testing, so costs which will be incurred due to delays in closings should also be included. (51)

RESPONSE: There are currently 14 commercial laboratories certified for the USEPA 900.0 Method, on which the Department's modified 48-hour Rapid Gross Alpha method is based. The Department anticipates that most of these 14 laboratories will seek certification in the 48-hour Rapid Gross Alpha method. Informal discussions with five of these laboratories indicate that these five laboratories together have the capacity to conduct over 2000 samples a month.

63. COMMENT: The costs to implement GPS for each drinking water system could cost as much as \$500, if performed properly by a Licensed Surveyor. (30)

RESPONSE: The Department does not agree that GPS coordinates must be collected by a licensed surveyor. The existing Department GPS standards, established under its GIS program at N.J.A.C. 7:1D, Appendix A, do not require a licensed surveyor. Of course, GPS coordinates may be collected by a surveyor at the time that the property boundaries are surveyed for purposes of the real estate transaction. However, regardless of who collects the GPS coordinates, the Department does not anticipate that the cost will be as high as the commenter estimates.

64. COMMENT: To a property owner, a couple of hundred dollars is a lot of money and for retired people and people working for a living. (50)

RESPONSE: The Department understands that incurring the cost of the water testing mandated by the PWTA may be difficult in some cases. However, the testing required by the PWTA provides important information concerning well water quality, which could have a significant impact on the health of the property owners.

65. COMMENT: Has the DEP come up with a set fee for the testing? Are the labs in good locations so that they are close to the counties that have many wells, in order to keep costs down? (6)

RESPONSE: The PWTA does not require the Department to determine a standardized fee for testing. It does, however, require that the testing be performed by a laboratory certified by the Department to conduct the testing. Laboratories are independent, in most cases commercial businesses who determine their fees based on many factors, thus, those fees may vary between laboratories. The Department will make available lists of laboratories that are certified to conduct the required testing to the public. A homeowner could then contact several laboratories and choose a laboratory considering the fees each of the laboratories estimated for testing. Laboratories certified for the testing required by the PWTA are located throughout New Jersey as well as neighboring states.

66. COMMENT: Is it or will it be specified who pays, the buyer or the seller? (35)
RESPONSE: The PWTA does not specify who should pay for the testing. Therefore, this is beyond the scope of the rules adopted herein.
67. COMMENT: This proposal will impact (by the Departments own data) 20,000 -30,000 sales transactions annually. Are these all re-sales or is new construction included? Without an estimate of the number of rental units which will be impacted, how can a guess be made as to the costs of compliance or the ability of the certified laboratories to handle the work in a timely manner? The proposal should be modified to allow for a delayed effective date until the Department can assure the regulated community that the resources needed to comply with the rule will be available in a timely manner and at a reasonable cost. The potential impacts to the real estate industry due to the delays alone warrant allowing adequate time for a more detailed assessment. (51)
RESPONSE: The estimate of 20,000 to 30,000 sales annually includes both new wells and resale of properties with existing wells. While it is true that an estimate of the number of rental units that will be affected is unavailable, the PWTA clearly provides a date upon which the law will apply, and this date cannot be extended by rule. In addition, as discussed previously in the response to Comment 45, the Department has determined that there is sufficient laboratory capacity in the State to meet testing requests.

Costs to local agencies:

68. COMMENT: For counties that have County Environmental Health Act certified agencies, will those agencies have full responsibility for the implementation and follow up of this act? Local health departments (municipal, regional & contract) should not have any additional duties under this act unless they will be receiving adequate funding for this act. (16)
RESPONSE: Please see the response to comment 72, below.
69. COMMENT: The increase in workload for the notification process, questions by residents and administrative duties could be prohibitive to some health departments. (26)
RESPONSE: Please see the response to comment 72, below.
70. COMMENT: Who will pay for all this extra work by the local health dept? What about lawsuits for property owners? (6)
RESPONSE: Please see the response to comment 72, below.
71. COMMENT: Cost to CEHA agencies coordinating the effort in their counties has been estimated to be \$3.1 million. The rules need to incorporate this funding. It does not address the costs of follow-up surveys. (37)
RESPONSE: Please see the response to comment 72, below.
72. COMMENT: Will CEHA or NJLINCS health departments receive adequate funding for this Act? (16)
RESPONSE: Response to comments 68 through 72: The PWTA does not mandate any action on the part of local health authorities. Therefore, the local health departments will

determine what activities to undertake in response to information received regarding well tests. However, the Department is making every effort to minimize the cost of PWTA implementation for local health agencies, including CEHA and NJLINCS agencies, and the public. For example, to assist with administrative and follow-up efforts, the rules require electronic transmittal of information to minimize the need for data input and storage, and a GPS location of the well in order to assist with the tracking of water quality problems. In addition, the Department will conduct coordinating meetings with local health officials, develop guidance for notification and develop language for form letters to assist with the interpretation of testing results, as well as provide educational materials for distribution to the public. Lawsuits for property owners are beyond the scope of the rules adopted herein.

73. COMMENT: N.J.A.C. 7:9E-5.1(a) -There is a substantial cost to local agencies in keeping records confidential. All other records pertaining to the property in question are open to the public for review. Therefore, keeping these records appropriately filed, yet separate, will require increased clerical time, and this cost must be borne by the Department. (15, 33)

RESPONSE: The PWTA requires the Department to provide the test results to the local health agencies. The PWTA also requires that certain information be kept confidential. See N.J.S.A. 58:12A-31. To assist in minimizing clerical costs to the local agencies, and assist in keeping the information confidential, the Department will provide the testing data to the local agencies electronically. The Department will also coordinate with the CEHA agencies on training and procedures to assist them in managing the PWTA well test data.

74. COMMENT: Unless the State Health Department is going to provide funding to hire personnel, the water test results should be sent to the county Environmental Health Agency and not to the local health department for follow-up and technical assistance, because the C.E.H.A. would be more likely to keep the records confidential. (15)

RESPONSE: The Department agrees that the county CEHA agency is the most appropriate recipient of well test results. Therefore, where there is a county CEHA agency, the Department intends at this time to provide well test results to those agencies. However, where no CEHA agency exists, the Department will forward notices of well failures directly to the local health departments.

75. COMMENT: The Department acknowledges that "...local health authorities are required under New Jersey safe drinking water regulations to take action when well water does not meet drinking water standards." Therefore the Department's use of the word may in the following is not correct. "An additional economic impact of the rules may be felt by the local health authorities..." and "...many local health authorities may become involved in overseeing well treatment and in investigating well contamination within their jurisdiction". The Department is correct in stating "the Department expects that failed well tests will likely result in an increase in workload at the local health authority level." (33)

RESPONSE: The commenter is referring to a sentence in the Economic Impact statement of the PWTA rule proposal. This sentence refers to two instances in which Safe Drinking Water rules require local action: approval of the construction of new water sources and the inspection of noncommunity water systems. As such, the PWTA is not increasing or

expanding the scope of the local health authority's duties under the federal and State Safe Drinking Water rules, but increases the information available to local health authorities in carrying out its existing mandates. CEHA agencies negotiate a contract with the Department for these services, including compensation, on a biannual basis.

76. COMMENT: The text states that "Health authorities may choose to notify neighboring property owners of the water quality problem". The rules imply that county health departments, once notified by the Department of a water test failure, can opt not to respond. Clearly, health departments can not ignore the public health threat of potential drinking water contamination in a neighborhood. Responding to such threats, health departments must notify neighbors, conduct preliminary source investigations, and work with affected parties and government officials to find appropriate remediation. Indeed, the published rules themselves acknowledge these local costs (an estimated \$3.1M statewide). The Act appropriates only \$100,000 statewide. This failure to provide adequate funding to county public health agencies amounts to a new unfunded mandate violating the spirit if not the letter of Article VIII, Section III, Paragraph 5 of the State Constitution. The language in the Economic Impact statement of the rules, as well as the Act itself, is an intentional attempt to circumvent the "state mandate-state pay" requirements of the State Constitution. (7, 25)

RESPONSE: Please see the response to comment 80, below.

77. COMMENT: N.J.A.C. 7:9E-4.1(a-c): Once the local health authority is notified of a MCL exceedance of an acute parameter, the local health authority must respond to protect the health of the residents. This will require notification of adjacent property owners, investigation to determine if these adjacent wells are affected, risk communication, sampling, etc. The Department must pay the cost of this increased workload or this regulation becomes an unfunded mandate. (33)

RESPONSE: Please see the response to comment 80, below.

78. COMMENT: The Department should provide funding to local health departments for any increased workload at the local level, associated with the "private well Testing Act". (15)

RESPONSE: Please see the response to comment 80, below.

79. COMMENT: This rule appears to constitute an unfunded mandate, and is thus subject to voiding by the Council on local mandates, pursuant to Article VIII, Section II, Paragraph 5 of the State Constitution. The process that would lead to voiding would impose an unnecessary cost on the State and local Governments. (The commenter attached a memorandum from a municipal health director, stating that county and local health officials estimate their cumulative costs (statewide) to be \$3.1 million per year. The municipal health director estimated the cost to his specific municipality at \$82,255 per year. (8)

RESPONSE: Please see the response to comment 80, below.

80. COMMENT: The proposed rule is creating an unfunded mandate. Although the rules state that health departments have the discretionary authority to provide notice to neighboring properties, how can the health department in good conscience not notify adjacent property owners? The economic impact of the proposed rule will be overwhelming to our county as most of the water sources in the county are private wells. How are the health departments to absorb the administrative cost when there is no money coming and just sending out the notifications will be too much for us? MS. CHARICIO: (22)

RESPONSE: Response to comments 76 through 80: The PWTA and these rules do not constitute an unfunded mandate because they are clearly discretionary. Neither the PWTA nor the rules require the local health authority to take any action concerning a well test failure. The only requirements triggered by an MCL exceedance apply to the laboratory and not to the local health authority. They are found at N.J.A.C. 9:E-4.1, and require a laboratory to notify the appropriate local health authority of certain exceedances. Furthermore, the PWTA at N.J.S.A. 58:12A-31 states "The county health Department, health agency or designated health officer, as appropriate to each county, may issue a general notice to owners of real property served by private wells located in the vicinity of the real property experiencing the water test failure, suggesting or recommending that those property owners may wish to have their private wells tested for at least the parameters at issue... It shall be at the sole discretion of the county health Department, health agency, or designated health officer, as appropriate to each county, whether or not to issue such a notice and to whom and by what means it shall be given." This provision is found in the rules at N.J.A.C. 7:9E-4. However, as discussed above in the response to comment 72, the Department is making every effort to assist local health agencies. It should also be noted that the PWTA appropriates \$1,000,000 (one million dollars) Statewide, not \$100,000 (one hundred thousand dollars) as stated by a commenter.

81. COMMENT: N.J.A.C. 7:9E-3.1(a)xviii(2): Once the person requesting the testing receives a notice that "...the analytical results do not meet the recommended standards for drinking water", that person will go to the local health authority to determine what the numbers mean, is it safe, how is the water treated, etc. This will take personnel and money to assist these residents. This must be provided by the Department. (33)

RESPONSE: The Department agrees that many people will be interested in receiving information regarding the interpretation of well test results, possible treatments for the removal of contaminants from well water, and related issues. The Department has established a website to assist in the dissemination of this information and will develop additional materials specifically targeted to private well owners.

82. COMMENT: The rule states that local health departments have the choice of whether or not to conduct public notification of positive test results [N.J.A.C. 7:9E-4.2 (a)]. Making this "optional" is unconscionable, because local health departments and the public view this notification, and the protective responses which follow, as necessary and mandatory. In short, adequate funding is needed to support such local responses which must take place. (13, 14)

RESPONSE: The PWTA and these rules state that these actions are discretionary on the part of the local health authority, as discussed in the response to comment 80 above. In those instances where the local health authority chooses to provide a general notification to neighboring property owners, the Department is working to provide guidance, model notices, and other support.

83. COMMENT: As stated by the Department in the Economic Impact Statement, the local health authority is required to respond under the NJ safe drinking water regulations. This is a mandated activity and must be paid for by the Department. These mandated activities go beyond just notification, they involve investigation, risk communication, sampling, overseeing installation of treatment devices, etc. (33)

RESPONSE: Please see the response to comment 84, below.

84. COMMENT: On page 1608, it says that although there is no requirement for remediation, if there is a violation, it expects the local health authorities to "take action." Under what regulation do you expect local health authorities to take action? The state drinking water act implies that we can only require compliance for new wells. This law does not give concrete guidelines for buyers, sellers and local health authorities and labs. (5)

RESPONSE: Response to comments 83 and 84: Currently, there are two situations in which safe drinking water rules require local action. First, local health authorities must approve construction of a new non-public water source (including a well). See N.J.A.C. 7:10-12. Second, the Department contracts with CEHA agencies for the periodic inspection of a noncommunity water system, as defined at N.J.A.C. 7:10-1.3, to determine compliance with federal and State Safe Drinking Water rules. Under some of these contracts, a well test failure would be considered a trigger requiring local inspection or disapproval of the use of the well. Neither of these requirements were created by the PWTA. The PWTA acts to increase the information available to local health authorities and to those involved in real estate transactions.

85. COMMENT: The local health authority must determine if a "...larger water quality problem that needs to be investigated further" exists. In order to do this, there is no choice as to whether to notify. Notification, investigation, sampling, follow-up of neighboring homeowners are required. (33)

RESPONSE: The quoted phrase is found in the social impact statement of the rule proposal (see 34 NJR 1607). The full sentence reads as follows: "As individual well test failures become known, health authorities will be able to determine if the reported problem is unique to that system/property or if there is a larger water quality problem that needs to be investigated further." (emphasis added). As is stated, any action on the part of the local health authority is discretionary. The PWTA provides local health authorities, as well as parties to real estate transactions, with information to enable them to make well-informed choices and decisions.

86. COMMENT: Laboratories are required to immediately inform local health authorities of water test failures for fecal coliform and nitrate since these are "...serious and immediate

health concerns ". The Department then goes on to state the local health authority must "...determine if action is necessary to protect the health of the consumers." Determining if a problem exists and taking action if necessary will take a substantial amount of additional personnel. There will be a significant cost for the time needed. (33)

RESPONSE: The quoted phrase is found in the social impact statement of the rule proposal (see 34 NJR 1607). The full sentence reads as follows: "Knowledge of the presence of these contaminants will allow the local health authorities to determine if action is necessary to protect the health of the consumers." (emphasis added). As is stated, any action on the part of the local health authority is discretionary. The PWTA provides local health authorities, as well as parties to real estate transactions, with information to enable them to make well-informed choices and decisions.

87. COMMENT: As the Department states, treatment units with granular activated carbon can become a "...radiation emitter that could pose an additional health risk to the residents of the building." The installation of these requires a database to be maintained and information provided to the property owner. This requires personnel and money for the local health authority. (33)

RESPONSE: Neither the rules nor the Department require the creation of a database regarding the installation of any treatment devices.

88. COMMENT: Will follow up survey data submitted by the Health Departments to the DEP also be required to meet the requirements of Subchapter 3 regarding timing, format of data submitted, GPS requirements, etc? Again, who pays for this other than the Counties? (37)

RESPONSE: Under the PWTA, the only test results that must be submitted to the Department are the initial test results, submitted by the laboratory performing the test. Neither the PWTA nor the rules require follow up surveys by the local health department, nor do they require submittal of data from such surveys.

89. COMMENT: We question whether these regulations will have a positive effect: many of the constituents cannot readily be remediated (iron, manganese, lead, mercury and arsenic). Moreover, iron and manganese are naturally-occurring species. There will be a deleterious effect on the Spill Fund, as tens of thousands of homeowners make claims for recovery of their remedial costs. This will reduce the ability of the Spill Fund to address more seriously contaminated sites. Furthermore, the estimated 20,000 to 30,000 annual filings under these regulations will drain the Department's ability to handle its other work. Given the negative or neutral environmental impact of these proposed regulations, we suggest that the Department use its influence to convince the State Legislature to repeal the enabling statute. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The PWTA does not require remediation of naturally occurring contaminants or of anthropogenic contaminants (contaminants of human origin). The commenters' estimates of annual increases in spill fund filings include claims for naturally occurring contaminants, which should not be included because the spill fund does not cover naturally occurring contaminants.

90. COMMENT: A funding source should be identified so that the record keeping and notification costs that will be incurred by the local health authority are paid for. In addition, a mechanism needs to be developed so that the identified funding is distributed to the appropriate agency. Often funding is distributed at the County level and never reaches the local level where the actual costs are being incurred. (46)

RESPONSE: The Department is providing record keeping support to local health authorities by creating and maintaining an electronic database which can be used by the local health authorities to access PWTA well test results. Regarding notification, any public notification is provided at the discretion of the local health authority. Funding for such notification is beyond the scope of the rules adopted herein.

91. COMMENT: The regulation states that the local health authority "may" choose to notify residents within 200' of a failing test. The regulation should provide clear guidelines so as to ensure consistent application throughout the state. The Rule should contain a protocol (including standard forms, letters and fact sheets) to investigate failed tests, set notification distances and provide guidance to impacted persons, so as to ensure uniform local action. (5, 14)

RESPONSE: Any actions and/or notifications are taken at the discretion of the local health authority. However, the PWTA charges the Department with establishing criteria for notification when a local health authority determines that notification should be provided. Therefore, N.J.A.C. 7:9E-4 sets a minimum distance for the distribution of public notifications, for use in those cases where a local health authority chooses to provide such public notification. This requirement is not intended to limit the local health authority from extending the area of notification if, in the agency's judgment, such action is warranted.

92. COMMENT: Our County Health Department is overburdened with the duties that they have right now. Is the funding going to be forthcoming from the state to help them out? In the past, the state would mandate certain things and would fund them for the first year, but the second year the communities were on their own, necessitating a local property tax increase. I am wondering if the same is going to happen with this. (50)

RESPONSE: The PWTA directs the Department to seek funding for the Private Well Testing Act program in the annual budget request submitted by the Department. See N.J.S.A. 58:12A-37. This request will be reviewed, and funding may be appropriated, by the Legislature.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 7:9E-1.2 Definitions

93. COMMENT: The definition of "authorized representative" is too broad. It should only be people that are directly employed by the laboratory. Our employees are directly employed by us. I can control their logbooks, their expiration data, their chemicals, their training, but I do not have any control over engineers or home inspectors. This puts me under pressure to accept samples from third parties and it may compromise the laboratory

in some situations. The rule should rely exclusively on certified samples, not authorized representatives. We feel the training for the sampling should be done by the State and not by an authorized representative of the laboratory because we do not want to be responsible for how the samples are collected. (17, 41)

RESPONSE: Each laboratory has the discretion whether to appoint a person as its authorized representative, or whether to use authorized representatives at all. A laboratory can increase its control over those who sample for the laboratory by using only its own employees.

94. COMMENT: The definition of who may become an "Authorized representative" to a laboratory (N.J.A.C. 7:9E-2.2) should exclude individuals that may have a possible conflict of interest (e.g., home builder, real estate agent, principals of the transfer, etc.). (2, 13)

RESPONSE: The PWTA specifically provides for sample collection by an authorized representative for a laboratory. However, as discussed in the response to comment 93 above, a laboratory is not required to appoint an authorized representative. Laboratories are subject to Department regulations and audits. Revisions to N.J.A.C. 7:18, which govern laboratory certification, hold the laboratory responsible for certain actions of the authorized representative. Should the Department become aware of unacceptable activity by the authorized representative, the Department will take appropriate action against the laboratory which may include decertification and penalties.

95. COMMENT: There are several inconsistencies in the definition of coliform. In your introduction, you speak of coliform. The lab notification section says you test for total, if it is positive you test for fecal and then you notify. DEP should take a look at consistency in the definition of fecal, of coliform, and when it is you want notification. (5)

RESPONSE: The term coliform is used in the rules to refer to either total coliform or fecal coliform. To minimize confusion over the rule requirements, N.J.A.C. 7:9E-2.1(a)2 has been revised upon adoption to clarify that the fecal coliform test is required only in cases where the total coliform test is positive. Testing for E. coli is an acceptable alternative to the fecal coliform test.

96. COMMENT: The definition of "local health authority" refers to a LINCS (Local Information Networks and Communication System) agency. A LINCS agency was set up by the State Health Department as an information system only. The requirements in this rule expand that information beyond the authority of the LINCS agency. That is a major problem. (9)

RESPONSE: The Department has clarified the definition of "local health authority" on adoption to indicate that it refers to a LINCS agency only in those counties which do not have a certified CEHA health agency. Therefore, those are the only two situations in which the LINCS agency will be considered the local health authority. Further, the rules only use the local health authority for communications purposes, so use of LINCS agencies for these purposes is appropriate.

97. **COMMENT:** In the definition of "Secondary Parameter", considering that iron and manganese are naturally occurring, and are listed as "secondary parameters" primarily for aesthetic reasons, the Department should remove these two species altogether from the testing requirements. There are no effective ways of removing these constituents from water. Forcing sellers to test for them will allow buyers to depress the values of private homes. Since the enabling statute requires testing for these constituents, the Department should use its influence with the State Legislature to have these species removed from the statute, if it is not repealed entirely. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: As the commenter notes, the PWTA requires testing for these constituents. See N.J.S.A. 58:12A-28.

SUBCHAPTER 2. SAMPLING AND TESTING REQUIREMENTS

N.J.A.C. 7:9E-2.1 Parameters for which testing is required

98. **COMMENT:** N.J.A.C. 7:9E-2.1(a)-(d): We question the wisdom of requiring testing for mercury, arsenic, lead and gross alpha particle activity unless there is some reasonable way for a private homeowner to remediate these problems. If not, these regulations are merely going to create additional concerns and financial burdens without providing any remedy. Since the enabling statute requires testing for these constituents, the Department should use its influence with the State Legislature to have these species removed from the statute, if it is not repealed entirely. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The fact that there may be problems with remediation for certain parameters does not mean that property owners should not be aware of their presence, in order to provide them the maximum opportunity to protect their health. Regarding lead and gross alpha activity, the PWTA requires testing for these parameters and therefore they are included in the rules. The PWTA at N.J.S.A. 58:12A-29a requires the Department to set parameters for which testing is required, and specifically directs a review of arsenic and mercury, as well as other parameters which the Department deems significant. Currently available data suggest that both arsenic and mercury in groundwater can be significant problems in certain areas of the State and are therefore included as parameters in the rules as adopted.

99. **COMMENT:** The proposed regulations would require Arsenic testing in Warren County. We are not aware that Arsenic is a significant groundwater contaminant in the County. (14)

RESPONSE: As set forth in the summary of the proposal, the Department included parameters for testing based on data showing that these parameters are present in groundwater in various areas of the state. However, in response to this comment, the Department has reviewed the data and has reevaluated the counties in which arsenic must be tested for. Based on this review, the Department determined that the primary source of arsenic in groundwater in northern New Jersey is the Piedmont geology. However, no portions of Warren or Sussex county overlay the area containing Piedmont geology. Therefore, the requirement to test for arsenic in these two counties has been deleted on

adoption. See N.J.A.C. 7:9E-2.1(c). The data upon which this is based can be obtained from the Department at submitquestionpwta@dep.state.nj.us or at (609) 292-5550.

100. COMMENT: N.J.A.C. 7:9E-2.1(c) and (d) should/must be strengthened to cover more counties for arsenic. According to an NRDC analysis of DEP data, some areas in South Jersey, especially Ocean and Cumberland, have some occurrence albeit less than northern counties. (31, 39)

RESPONSE: The primary source of arsenic in groundwater, and the highest levels of arsenic, in New Jersey stem from the geology of the Piedmont region in northwestern New Jersey. The evidence for the presence of arsenic in groundwater is much less compelling in the coastal plain area in southern New Jersey. Therefore, the Department has required testing for arsenic only in the northern counties.

101. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law in requiring the radium/48 hour gross alpha test. The counties covered are appropriate except that Passaic and Sussex should be included because DEP's testing there found problems. These should be phased in appropriately. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules. Regarding the suggestion to require testing for gross alpha activity in Passaic and Sussex counties, radiological studies performed by the United States Geological Survey indicate that these counties do not have a problem with gross alpha activity.

102. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law: Specific Parameters (N.J.A.C. 7:9E-2.1(a) to (d)) -Fecal Coliform statewide -Mercury in South Jersey -Arsenic in North Jersey. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules.

103. COMMENT: We urge the Department to carefully evaluate the necessity of testing for various parameters based on actual results obtained in the future. We are concerned over the high cost for water testing mandated by the proposed rules. We are concerned that a philosophy of "test anyway" or "better safe than sorry" will result in testing for parameters that do not occur. (34)

RESPONSE: The parameters which the Department has established by these rules are those which the PWTA requires, and those which the PWTA requires the Department to consider. Data and studies supporting the significance of these parameters is available by contacting the Department's Bureau of Safe Drinking Water through the PWTA website at www.state.nj.us/dep/pwta. In accordance with N.J.S.A. 58:12A-35, the Department will evaluate the well test data within five years to determine whether adjustments to these requirements are warranted.

104. COMMENT: Will laboratories be limited to reporting only contaminants with MCLs? What about unregulated compounds, TICs and common lab contaminants -especially those with low MCLs, such as 1,2-dichloropropane? Will homeowners or requesting parties be getting copies of the trip blanks? (37)

RESPONSE: In order to comply with the PWTA, the test results must be submitted on the private well water test reporting form, which includes only the parameters established

under these rules. Therefore, only the parameters established by the PWTA and these rules will be accepted by the Department's electronic data delivery system. As is always the case, interested parties may have well water tested for any parameter deemed appropriate. Regarding whether a homeowner can obtain a copy of the laboratory's trip blanks, N.J.A.C. 7:18 does not mandate that information regarding trip blanks be reported to the client along with test results. However, the laboratory is required to maintain this information, and the laboratory must make it available upon the client's request.

105. COMMENT: Although it is stated ambiguously, it appears that wells with conditioners will be required to take 2 samples, not just one. Please clarify. (37)

RESPONSE: The PWTA rules require only one sample for each parameter. However, two separate tests of the same sample will be required in the case of a coliform sample that tests positive for total coliform. In such a case, the same sample must be tested again, for fecal coliform or E. coli. This has been clarified upon adoption at N.J.A.C. 7:9E-2.1(a)2.

106. COMMENT: When will the sampling form be posted on the website? (37)

RESPONSE: A draft of the sampling form is currently posted on the Department's website at www.state.nj.us/dep/pwta. The Department expects the final version of the form to be available prior to the date of publication of this rule adoption.

N.J.A.C. 7:9E-2.2 Collection requirements

107. COMMENT: If pH testing is required, and it must be analyzed by certified laboratory personnel within 15 minutes of a sample being taken, how can anyone who is not a certified laboratory personnel collect samples unless that person was taking the sample to a laboratory within 15 minutes to have it done? Does the Office of Quality Assurance foresee an enormous request for certification for pH only, which would then allow them to go and do pH tests in the field? Is there going to be any criteria for this certification? Currently, someone could apply for certification for pH only. Then they could be considered a certified laboratory and could go out and sample for other parameters, although they are not conducting the analysis, but would be sending it to another certified laboratory. (1)

RESPONSE: In accordance with the definition of authorized representative at N.J.A.C. 7:9E-1.2, anyone may become an authorized representative of a certified laboratory, provided that the certified laboratory "accepts drinking water well samples and also accepts responsibility for such samples in accordance with the requirements of N.J.A.C. 7:18-9.1(c)." See N.J.A.C. 7:9E-1.2. The commenter is correct that an employee of a laboratory that is certified for pH testing only may conduct sampling for all other PWTA parameters, as long as the requirements for sampling certification adopted at N.J.A.C. 7:18-9.4(b)7i are met. However, only employees of laboratories certified for the conduct of pH testing may analyze for pH for purposes of conformance with the PWTA. The Department is unable to determine at this time whether a large number of businesses will seek certification for pH and sampling. There are already a number of laboratories that maintain certification for pH and other analyze-immediately parameters. The Department does expect some of these firms to obtain certification for the PWTA sampling category.

108. COMMENT: The Rules state that the sample collector who analyzes pH shall be certified as set forth in the Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18. We disagree with this requirement as it is inconsistent with allowing the Certified Laboratory to have an authorized representative collect the water sample with responsibility resting on the Lab to ensure that the sample is collected properly. (30)

RESPONSE: N.J.A.C. 7:9E-2.2(a) has been revised upon adoption to clarify that samples may be collected by either an employee or an authorized representative of a "certified environmental laboratory," as defined at N.J.A.C. 7:18-1.7. However, all analysis, including pH, must be conducted by an employee of a certified environmental laboratory, in accordance with N.J.A.C. 7:18. An authorized representative may not analyze samples. However, pH must be analyzed within 15 minutes of sampling under N.J.A.C. 7:18-8. Therefore, the Department is aware that, for a sampler who is an authorized representative only and not an employee of a certified environmental laboratory, it will be difficult to collect a pH sample, transport it to the laboratory, and for the laboratory to analyze it within the allotted 15 minutes. However, it should be noted that an individual person can become a "certified environmental laboratory" for pH (or for any other parameter). Thus, a sample collector may choose to become a "certified environmental laboratory" for pH analysis only. The sample collector could then serve as an authorized representative for other laboratories certified to analyze for the other required PWTA parameters, such as VOCs, gross alpha, etc.

109. COMMENT: How many states other than New Jersey are mandating that pH samples be taken within 15 minutes for potable water? Given the increase in sample and staffing costs, why does the DEP feel this is justified? (37)

RESPONSE: All states operating under the Federal Safe Drinking Water Act are required to follow the Federal analytical methods in 40 CFR 141. The requirements in N.J.A.C. 7:18 are consistent with these Federal standards. Under these existing requirements, pH is an "analyze immediately" parameter, which means that analysis must be performed within 15 minutes of sample collection. However, all states do not require that pH analysis be conducted by a certified laboratory. The PWTA however, states that all testing submitted for conformance with the Act must be conducted by a laboratory certified by the Department. The New Jersey State standards for pH testing can be found at N.J.A.C. 7:18-9.4(b), Table 9.1. The Federal standards are found in the "Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance" USEPA 815-B-97-001, Table IV-7 "Preservation and Holding Times for Regulated Parameters." Industry standards are contained in "Standard Methods for the Examination of Water and Wastewater," 19th edition, Table 1060:1.

110. COMMENT: How are DEP and DHSS (Department of Health and Senior Services) addressing health related issues regarding filter backwash after collection of gross alpha emitters, as well as the potential for the units to become gamma sources? Who will pay for survey samples for gross alpha emitters? (37)

RESPONSE: The Department noted in the summary of the rule proposal that, in some cases, certain treatment units could themselves become sources of contaminants (including radiation), by concentrating those contaminants within the treatment unit. However, in accordance with the PWTA, these rules as adopted do not regulate the testing or maintenance of treatment units. The Department defers to the Department of Health and Senior Services regarding issues within its purview.

111. COMMENT: In my town, a citizen can buy a basic kit for \$40 to test the well water. For another increment, they can test for more sophisticated problems. But this is a volunteer process. The individual homeowner buys the kit and collects the water, it is then taken to a certified laboratory to be tested and we get a good price because of the volume. Will the new rules eliminate the possibility for an individual homeowner to do this? (29)

RESPONSE: These rules do not limit homeowners' abilities to obtain testing for their own well water. In fact, the Department encourages home owners to have their well water tested on a regular basis. Both N.J.A.C. 7:9E and the amendments to N.J.A.C. 7:18 apply only to testing conducted as a requirement of the PWTA. Citizens should be aware however, that if they need to comply with PWTA requirements regarding real estate transactions, they must comply with all requirements of these rules and the applicable provisions of N.J.A.C. 7:18, including sampling and testing requirements. The use of test kits by home owners would not conform to the requirements of N.J.A.C. 7:18, unless the home owner meets the definition of a "certified laboratory" at N.J.A.C. 7:18.

N.J.A.C. 7:9E-2.3 Sample location

112. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law in requiring raw sampling. We suggest that you require that the finished water be tested for fecal coliform with the same rationale the DEP used for total coliform and lead. (N.J.A.C. 7:9E-2.3). (31, 39)

RESPONSE: Please see the response to comment 119, below.

113. COMMENT: The proposed test is very costly and it would make more sense to direct it at the water to be consumed (public health focus) and not the raw water source (data collection focus). If the raw water is sampled, who will respond to questions about the quality of the water after treatment? If additional sampling is recommended to the resident, an increase in costs and time will be incurred, things very critical around a house closing. The two objectives can be met with the requirement for compliance with the primary standard MCL and penalty/enforcement capability. (26)

RESPONSE: Please see the response to comment 119, below.

114. COMMENT: N.J.A.C. 7:9E-2.3 requires that point-of-entry water treatment devices be "disabled or disconnected" prior to collection of the water sample. First, there will be many cases where it will be impossible to "disable or disconnect" point-of-entry water treatment devices. Therefore if the DEP is going to require untreated samples, it must establish specific criteria and procedures for cases in which it is impossible to collect an untreated water sample. Second, it was my understanding that the primary purpose of the Private

Well Testing Act (PWTA) was to test the drinking water that homeowners would be drinking. Point-of-entry water treatment devices are an integral part of a private water supply system and should be subject to this testing in order to provide the truest representation of the water that will be consumed by the homeowner. Furthermore, most real estate sale contracts and lending institutions require that water samples meet all applicable US EPA & NJ DEP requirements for the parameters being analyzed. These requirements apply to treated water, not raw water. If the DEP were to accept point-of-entry treated samples, buyers/sellers could use their PWTA water test to also fulfill lending institution and sales contract requirements. This would significantly reduce the costs of testing to the consumer. In addition, it would reduce confusion by creating a more uniform sampling protocol, thus making the entire rule easier to administer and more consumer friendly. Finally, for the sake of comparison, it should be noted that Safe Drinking Water Act monitoring for public water systems is conducted almost exclusively on water samples collected at the point-of-entry after treatment. (4)

RESPONSE: Please see the response to comment 119, below.

115. COMMENT: In homes that have water treatment systems, the only way for buyers and sellers to have a complete picture is to collect and analyze samples of **both** raw and treated water. We recommend the DEP consider this or, at a minimum, include interpretive language in the "Private Well Testing Act Reporting Form" to that effect. (2, 13)

RESPONSE: Please see the response to comment 119, below.

116. COMMENT: The rules require that water sample collection needs to be done on raw water, after disabling a point of entry water treatment. If a point of entry water treatment system is there already, it is usually there for a reason. If it is a filtration system or a neutralizer, if you are disabling it you are going to find the water will fail. Then you are basically testing failing water. Why is there a reason to test failing water again? (24)

RESPONSE: Please see the response to comment 119, below.

117. COMMENT: The reason to allow the finished water sample is not because you suspect in an older home that there might be a treatment train, lead contamination, it is that it is just too difficult to disconnect? (31)

RESPONSE: Please see the response to comment 119, below.

118. COMMENT: What happens when a sampling technician enters a home and finds that there is a point of entry treatment system and there is no way to sample water without the water going through the point of entry treatment system? It could be rejected, and there could be a question of who is at fault. So should the sample be collected, submitted and analyzed, or should the sample not be collected until the homeowner hires a plumber to replumb so they can divert around the system? (27, 36)

RESPONSE: Please see the response to comment 119, below.

119. COMMENT: I am concerned that the testing applies to raw water. The Department should provide the basis for this. The intent should be to insure potable water at the tap. Why are we targeting private wells on resales? If you really want raw water data, why do

not we go back and amend the Safe Drinking Water Act and generate this data? You cannot guarantee somebody that they are going to get potable water at the tap if you are not testing at the tap. (5)

RESPONSE: Response to comments 112 through 119: The PWTa repeatedly refers to the testing of "wells," "well water," and "water supplies." Furthermore, the PWTa at N.J.S.A. 58:12A-30f requires the Department to compile data obtained "for the purposes of studying ground water supplies or contamination in the State." Data on treated water would not enable the Department to study ground water supplies or contamination as required. If treated water contains a contaminant, it is impossible to tell whether the contaminant originates in the groundwater, in the treatment system, in the plumbing, or in the faucets. If contaminants are found in untreated water, the consumer can evaluate the problem and apply appropriate treatment. For well owners or potential well owners who wish to obtain data on their treated water, the Department is developing guidance to assist them in obtaining and interpreting test results. Regarding situations where a water treatment system cannot easily be disconnected or disabled, it may be necessary to modify the water system, in order to provide a sample that will comply with the PWTa and these rules.

120. COMMENT: The proposed regulations require sampling untreated water. To ensure that an existing treatment system is functioning properly, a provision is needed to test treated water also. (14)

RESPONSE: The focus of the PWTa is to provide information regarding well water quality, not to provide information regarding the whether installed treatment systems are functioning properly. Therefore, while owners of water systems with installed water treatment devices may choose to test the treated water in addition to the required untreated water samples, this is not required by the PWTa rules.

121. COMMENT: (N.J.A.C. 7:9E-2.3) While we realize there are questions of compliance in mandating collection of "first draw" rather than "flushed samples" for lead testing, from a public health perspective it is more important to perform a lead analysis based on a "first draw" sample collection rather than a "flushed" sample collection. We recommend this be changed or the "first draw" sample be added. (2, 13)

RESPONSE: Please see the response to comment 124, below.

122. COMMENT: The rule proposes using a flushed sample for lead analysis. The source of lead in potable water could be groundwater contamination or the home's indoor plumbing. (In our experience most lead problems are plumbing related.) Accordingly, we recommend that a "first draw" sample as well as a "flushed" sample be analyzed. This will enable county health departments to provide better guidance to the affected parties in terms of risks as well as appropriate remediation. (25)

RESPONSE: Please see the response to comment 124, below.

123. COMMENT: The proposed regulations specify taking a flushed sample for lead analysis. A "first draw" sample is more appropriate, because the plumbing system is the primary source of lead in drinking water. (14)

RESPONSE: Please see the response to comment 124, below.

124. COMMENT: N.J.A.C. 7:9E-2.3 states that the sample is to be collected at the consumers tap, and that water shall be flushed through the plumbing system until a significant change in water temperature has occurred. This conflicts with the USEPA drinking water sampling requirements at 40 CFR 141.86(b), which require that all tap samples for lead and copper shall be first draw samples. New Jersey water sources do not typically contain lead as a contaminant. The origin of lead in drinking waters can be found in the consumers home plumbing. Corrosive water standing in the home plumbing over extended time periods leaches lead from the pipes or the solder used for sealing pipe joints resulting in elevated drinking water lead in the first flush sample. The sampling approach in the proposed rule is valuable for secondary samples that can be analyzed when lead is detected in the first draw sample. The first flush sample would then provide definitive information on the source of lead in the drawn water. The sampling approach in the proposed rule would not indicate elevated lead concentrations caused by leaching from the home plumbing. (41, 47)

RESPONSE: Response to comments 121 to 124: Consistent with the collection of untreated well water samples, the PWTA rules require the collection of a flushed sample for lead. Untreated well water quality can only be determined through a flushed sample, because a first draw sample reflects the contribution of lead from the plumbing system or fixtures. There are some aquifers in New Jersey that can contribute lead to well water. Regarding the suggestion that both flushed and first draw samples be required, please see the discussion of untreated versus treated water sampling in the response to comment 119. The EPA drinking water requirements referred to by the commenter apply to municipal and other public potable water systems. These requirements are designed to evaluate the contribution of lead to treated drinking water by the public water distribution system, as well as by plumbing within the consumers' home. They are not designed to evaluate untreated water quality, nor to be applied to a private water supply.

125. COMMENT: The proposed rules state that a difference in the temperature of the water must be observed before you can take a sample. I am assuming that is to make sure that the water is coming from the well and was not sitting in the pipes overnight. Rather than waiting for a temperature variance, it would be easier to have a specific time that you run the water for, perhaps 15 or 30 minutes before you take a sample. In most cases, a well holding tank within minutes is going to start pumping from the well. If you use a temperature difference as the main criterion, if someone is using the water all day long and someone goes out and takes a sample, it is going to be very difficult for whoever is sampling to get a temperature difference. The well holding tank is probably recharging itself so you are not going to get a temperature variation. (1)

RESPONSE: USEPA's "Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures, Quality Assurance, Fourth Edition, EPA 815-B-97-001, March 1997, requires "maintaining a steady water flow for at least two minutes (until the water changes temperature)." The Department agrees that in some cases waiting for a temperature change may not be a practical or effective way to ensure that the water has been flushed through the plumbing. However, the Department believes that the time

periods of 15 or 30 minutes suggested by the commenters are excessive. Therefore, the rules have been clarified upon adoption to allow for flushing the water for at least two minutes, in accordance with the USEPA method. See adopted N.J.A.C. 7:9E-2.3(c).

126. COMMENT: It is important to also look at other values for lead. Lead is not just in our plumbing fixtures. We must be sure that if it is just being used for plumbing, that we must also take a full analysis of both lead and mercury because they have the same effects on human health. (22)

RESPONSE: The Department agrees that there are other sources of lead besides plumbing systems and fixtures. Therefore, the PWTA rules require testing of untreated water to determine if lead is present in the groundwater supplying the well. The PWTA rules require testing for mercury in areas of the State where current data show that mercury may be a significant problem. These data are available upon request of Department's Bureau of Safe Drinking water at (609) 292-5550.

127. COMMENT: What happens when a new home is built by a contractor and then there is a real estate transaction? Depending on the local health department, there are different kinds of regulations for that, but what happens then? For example, certain areas do not have to do Gross Alpha or VOC for new wells, but then there is a real estate transaction so what applies? (27)

RESPONSE: If a test meets all of the requirements of N.J.A.C. 7:9E and N.J.A.C. 7:18, it may be used for purposes of compliance with the PWTA and these rules, whether or not the test was performed in anticipation of a real estate transaction or was necessary to comply with local requirements for new construction. However, if a test is performed for the purpose of compliance with a local ordinance that does not require testing of the same parameters as these rules, the additional parameters would have to be tested in order to comply with these rules.

128. COMMENT: Does N.J.A.C. 7:9E-2.3(a)5, which discusses "new well construction" include only new homes where in-home plumbing has yet to be installed? (2, 13, 35, 43)

RESPONSE: The provision referred to by the commenter is not limited to new buildings where in-home plumbing has yet to be installed. It applies to any new well, where there is no spigot or tap on the subject property. Note that this provision has been recodified upon adoption at N.J.A.C. 7:9E-2.3(b).

129. COMMENT: Please clarify what "retests" are being referred to in N.J.A.C. 7:9E-2.3(7.). This term could be confusing in that treated water sampling could be prohibited. If this means retesting after the validity of the initial test has expired, then this line is best moved to N.J.A.C. 7:9E-3.3. (2, 13)

RESPONSE: The provision was intended to apply only to sampling as part of the repetition of a test in order to correct an error or problem that rendered the original test noncompliant with the PWTA. The provision has been deleted upon adoption to reduce the potential for misinterpretation.

SUBCHAPTER 3. REPORTING AND DATA VALIDITY

N.J.A.C. 7:9E-3.1 Reporting requirements

130. COMMENT: Do the laboratories have to notify the seller of the results? How about the buyer? (18, 23, 28, 32, 38, 42, 44)

RESPONSE: N.J.A.C. 7:9E-3.1 requires laboratories to notify the person who requested the test of the test results; it does not specify who must request the test. It should be noted, however, that both the buyer and the seller must receive and review a copy of the test results as required by the PWTA at N.J.S.A. 58:12A-27b.

131. COMMENT: We presume that N.J.A.C. 7:9E-3.1(a)1(xv) requires the laboratories to provide to the homeowner a statement of available remediation funding alternatives.

Please clarify that this does not require the labs to notify the Department of the funding alternatives available to the homeowner. (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The commenter is correct that the laboratory must provide this information to the person who requested the test, and not to the Department. The Department will provide the laboratories with the information they must supply to the test requester, as part of the Private Well Water Test Reporting Form. The introductory language of N.J.A.C. 7:9E-3.1(a)1 has been clarified on adoption to avoid confusion on this point.

132. COMMENT: N.J.A.C. 7:9E- 3.1(a) should require that the "Private Well Testing Act Reporting Form" track Consumer Confidence Reports more closely. (31)

RESPONSE: Consumer Confidence Reports (CCRs) are annual reports on water quality that the Department and USEPA require public water systems to send to their customers. Much of the information on a CCR does not apply to private wells. Rather than include all of the CCR information on the Private Well Water Test Reporting Form, the Department will provide this information on its PWTA website (www.state.nj.us/dep/pwta). This will allow a well owner to obtain detailed, up to date information on the particular parameters that are at issue for their well, without confusing them with information that does not apply to them. Information on MCLs, MCLGs and health effects is currently available from the Department's Water Supply Administration website (www.state.nj.us/dep/watersupply/) and the USEPA website (www.epa.gov/safewater). The PWTA website will have links to both of these websites, and the website address will be prominently displayed on the reporting form.

133. COMMENT: Neither the "Private Well Testing Act Reporting Form" (N.J.A.C. 7:9E-3.1(a)1 and N.J.A.C. 7:9E-3.1(a)1.iv) nor "additional information" (N.J.A.C. 7:9E-3.1(a)1.xvii) were available at www.state.nj.us/dep/watersupply/PWTA so we cannot comment on how user/reader friendly these are and this concerns us. Can these be made available before the close of public comment? We would further suggest that the town, county or regional Health Dept. be included as an additional potential source of information (31, 39)

RESPONSE: The Department was unable to finalize the reporting form and website prior to the proposal of the rules. However, the content of the reporting form was described in

detail in the rule proposal at N.J.A.C. 7:9E-3.1 (see 31 N.J.R. 1611 and 1612), and the Department expects to have final versions of the form and website in place by the date of publication of this adoption. Information on locating local health authorities is currently available from the website maintained by New Jersey Department of Health and Human Services at www.state.nj.us/health/lh/lhdirectory.pdf. A link to this site will be available from the Department's PWTA website. Note that the web address of the PWTA website has changed from that listed in the proposal (www.state.nj.us/dep/watersupply/pwta) to www.state.nj.us/dep/pwta. This change has been made upon adoption throughout the rules.

134. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law by requiring GPS coordinates. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules.

135. COMMENT: The requirement at N.J.A.C. 7:9E-3.1(a)xi for providing the Global Position System (GPS) location of the wellhead or front door of the property should be made voluntary. The Economic Impact Statement includes no information on the availability or cost of this service. Is the Department confident that the certified labs will be able to provide this service? If not the labs, the regulated community will have to engage the services of an additional professional at an additional, unidentified cost. Without assurances that these services are available at a reasonable cost this provision should not be adopted. The rule refers to N.J.A.C. 7:ID as the standard for this mapping requirement. These standards are well beyond the understanding of the average homeowner. Further, the use of GPS is not included in the Private Well Testing Act. To satisfy the Department's desire to accumulate these types of data, the provision could be included, but as a voluntary item. (51)

RESPONSE: The PWTA charges the Department with compiling the well test data in a form that can be used for studying groundwater. Specifically, at N.J.S.A. 58:12A-30f, the PWTA requires the Department to compile the data "in a manner that shall be useful to the Department, counties, municipalities, and other governmental entities for the purposes of studying groundwater supplies or contamination..." Further, the PWTA charges the Department with conducting a public information program to inform the public regarding "... the geographic areas in the state subject to an actual or potential threat of danger from contaminated groundwater..." (See N.J.S.A. 58:12A-33.) In addition to assisting the Department in providing the public outreach programs mandated by the statute, the data will be used to assist the Department in its overall mission to monitor and control environmental contributors to public health problems, especially problems attributable to groundwater contamination.

To perform the studies required by the PWTA, to provide the required public information, and to protect public health, the location of each well must be accurately identifiable in a way that can be reasonably expected to remain constant over time. Although the information pertaining to specific well locations will not be publicly available because of the PWTA confidentiality provisions, it is indispensable to the Department and local government agencies to assist them in determining, among other things, groundwater conditions in specific locations and patterns of contaminant plume movement. GPS data

identify a point on the surface of the earth, unrelated to real estate lot lines, political jurisdictional boundaries, or other landmarks which can change over time. For example, problems with tracking the location of wells over time using lot and block information were identified by the USGS in a study of a well testing database created by Ocean County. Further, lots and blocks are not currently GIS compatible.

The Department needs these data in GPS format to make them compatible with other data. The studies required by the PWTA require not only the analysis of the PWTA data itself, but the ability to integrate the data with other data layers. For example, by overlaying well test results on aquifer maps, the Department can determine from which aquifers contaminated wells are drawing water, and can provide guidance to well drillers to prevent placement of wells in contaminated areas. Further, the PWTA-mandated studies may require the Department to analyze well test data in relation to other data layers such as population concentrations, land uses, areas of known contamination, and source water protection areas such as watershed lands, etc. All of these data layers are in GIS format. Well location is geographic information, and GPS data are considered to be the mainstream technology for collection of geographic data worldwide, in local, state, and national government; public utilities; academic institutions; and private industries. Finally, the degree of accuracy required in these rules is consistent with the State standard for GPS data. This standard is being considered for Statewide use by the New Jersey Geographic Information Council pursuant to Executive Order Number 122 (2001).

Regarding the cost of collecting GPS coordinates, several laboratories have indicated to the Department that they plan to offer the collection of GPS coordinates as an additional service when water samples are collected, and the cost of this service was therefore included as part of the Department's average estimated PWTA compliance cost of \$450 - \$650. Further, the GPS service can be provided by any person who can meet the Department's GIS standards; including laboratories or authorized representatives, surveyors, real estate agents, and independent consultants. To assist parties in collecting GPS location information that complies with the Department standards, the Department will provide guidance regarding recommended specifications for GPS units.

136. **COMMENT:** The Department is proposing to require Global Positioning System (GPS) to more accurately identify the location of each well. GPS data should be required to be certified by a licensed surveyor to ensure accuracy. (30)

RESPONSE: The Department does not believe that a licensed surveyor is necessary in order to ensure the accuracy of GPS coordinates. There are many high quality GPS systems available that, with the training provided by the manufacturer, can ensure accuracy that will meet the Department's standards for GPS data. However, if persons involved in a real estate transaction must obtain a survey in preparation for the transaction, they may choose to hire the surveyor to collect the GPS coordinates at the same time that the survey is taken. Further, proposed N.J.A.C. 7:9E-3.1(a)1xi (adopted at N.J.A.C. 7:9E-3.1(a)1x) has been modified upon adoption to provide more flexibility in GPS data collection. It now provides that, in cases where GPS coordinates cannot be collected at either the well head or the front door, an alternative collection location may be used.

137. COMMENT: N.J.A.C. 7:9E-3.1(a)xv requires a statement of available remediation funding. Until this requirement is clarified and justified, it should not be adopted. What is meant by a statement of available remediation funding? How would a homeowner or landlord be aware of such information? How is it relevant? How will it be used? This requirement serves no purpose and will confuse the regulated community. (51)

RESPONSE: In accordance with the PWTA at N.J.S.A. 58:12A-30, the Department will provide the certified laboratories with information on remediation funding so that the laboratories can provide the information to the public. The Department will provide this information on the Private Well Water Test Reporting Form.

138. COMMENT: We strongly object to the use of "analytical results meet recommended standards for drinking water." At a minimum, "recommended" should be eliminated. MCLs are not recommended. They're legally enforceable standards for public water. If anything, maximum contaminant level goals, the health-based goals for all water, are what is recommended. Accordingly, this is a perfect place to insert information about maximum contaminant level goals in vulnerable populations. (31, 39)

RESPONSE: To avoid confusion, the word "recommended" has been deleted from N.J.A.C. 7:9E-3.1(a)lxvii (proposed at N.J.A.C. 7:9E-3.1(a)lxviii) upon adoption, and from the Private Well Water Test Reporting form. The rules and form have been revised to distinguish more clearly between primary and secondary standards. It should be noted that some drinking water standards are not MCLs. An MCL is one type of primary drinking water standard promulgated by the USEPA and the Department (the other primary standards are action levels and treatment techniques). In addition, there are secondary drinking water standards for certain parameters (such as iron, manganese and pH), which are based on the aesthetic impact of these parameters, rather than on health effects. These secondary standards are referred to as "recommended limits." Some of the parameters tested under the PWTA are subject to MCLs, while others are subject to other types of primary standards, or to secondary standards. The Department has not added MCLGs (maximum contaminant level goals) to the Private Well Water Test Reporting Form. As the term "goal" implies, these are suggested levels that are much more stringent than the primary and secondary standards, and in some cases MCLGs are not even attainable within the limits of current technology. Further information on MCLGs is available on the EPA website at www.epa.gov/safewater.

139. COMMENT: We applaud the Department's implementation of this bill and those standards which are more stringent than the minimum requirements of the law. (39)

RESPONSE: The Department appreciates this comment in support of the Department's PWTA program.

140. COMMENT: The forms also need to require a phone number for the person who requested the test. (37)

RESPONSE: A provision has been added on adoption at N.J.A.C. 7:9E-3.1(a)2xvii, requiring the telephone number of the person who requested the test.

141. COMMENT: We are concerned that the Department may release compilation documents that broadly imply that water wells are not safe and thereby taint the public's confidence in all water wells. When unsafe parameters are found, we urge the Department to investigate the well depth and construction, when drilled, geology of the area and potential sources of man-made contamination. Careful analyzing of contaminated wells may point predominantly to defective, old shallow wells that should be replaced with new wells that meet current well drilling code requirements. This distinction is important for public knowledge and the business interests of the well drilling industry. (34)

RESPONSE: The Department agrees that careful analysis of the data collected under the PWTA is needed in order to evaluate which potable wells are at risk for contamination. The data will provide the Department with a great deal of valuable information regarding the health of aquifers in New Jersey. The Department is required under N.J.S.A. 58:12A-33 to release to the public certain types of compilation documents. Release of these documents will be effected in accordance with the confidentiality requirements of the PWTA. The Department will make every effort, when releasing these documents, to clearly state the limits of the data, and to provide context which will assist the public in appropriately interpreting the data. Further, as part of its public education program under N.J.S.A. 58:12A-33, the Department will provide information on its website (www.state.nj.us/dep/pwta) in order to help the public interpret the data appropriately.

N.J.A.C. 7:9E-3.2 Electronic data submittal

142. COMMENT: N.J.A.C.7:9E-3.2(b): What if a lab is not registered, but performs these services? Who is responsible? Will the homeowner be required to have additional testing? (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The PWTA at N.J.S.A. 58: 12A-30 provides that all water tests conducted for compliance with the PWTA shall be conducted by a laboratory certified by the Department. Therefore, testing performed by a laboratory that is not certified would not comply with the PWTA or these rules.

143. COMMENT: N.J.A.C. 7:9E-3.2(d): How long will the Department have to reject a submittal? Should the closing be delayed until the Department has reviewed the lab submittal? If the closing occurs prior to the Department's review, and a lab submittal is insufficient, can the Department (or a third party) force the rescission of the sale? (18, 23, 28, 32, 37, 38, 42, 44)

RESPONSE: The Department has developed a computer system that will notify laboratories within five days of submittal whether the Private Water Well Test Reporting Form has been properly completed. However, if there is some error in the substance of the information reported on the form, this will not be immediately apparent to the Department, and these issues will need to be resolved among the laboratory, the test requester, and the parties to the real estate transaction. The question of rescission of a real estate sale is beyond the scope of these rules as adopted herein.

N.J.A.C. 7:9E-3.3 Electronic data submittal

144. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law in requiring electronic submission. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules.

145. COMMENT: Given the testing requirement relates only to raw (untreated) water, we suggest that N.J.A.C. 7:9E-3.3(d.) (2.) be deleted. (2, 13)

RESPONSE: The Department agrees and the provision has been deleted upon adoption.

146. COMMENT: N.J.A.C. 7:9E-3.3: DEP deserves credit for going beyond the minimum requirements of the law by making the testing frequency 1 year for all but fecal and total coliform which are good for only 6 months. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules.

SUBCHAPTER 4. NOTIFICATION PROCESS

N.J.A.C. 7:9E-4.1 Notification requirements

147. COMMENT: The rule specifically defines an acute parameter and requires prompt notice, but it does not include volatile organics for which there is an MCL. The DEP should address volatile organics for which there is an MCL, as well as coliform and nitrates. They are known carcinogens. (5)

RESPONSE: An "acute parameter" is described in EPA Safe Drinking Water regulations. The term "acute" is used because even short term consumption of these contaminants at the MCL has the potential for immediate serious adverse health effects. Currently, nitrate and coliform are the only acute parameters recognized by the EPA.

148. COMMENT: The rule requires the laboratory to contact the health department upon the knowledge of a failing coliform or nitrate. However, what is the responsibility of the health authority if the laboratory also notifies the person who requested the test? (26)

RESPONSE: Regardless of who is notified of the test results, any action taken by the health authority is at its own discretion. See N.J.S.A. 58:12A-31a and N.J.A.C. 9E-4.

149. COMMENT: Laboratories will be required to notify local health authorities in the event of a large exceedance for a number of parameters. Will the Department publish a listing of those local public health entities? There are a great number of them. That represents a responsibility for the laboratories and also a liability. (19)

RESPONSE: The listing requested by the commenter is currently available on the New Jersey Department of Health and Senior Services (DHSS) website at www.state.nj.us/health/lh/lhdirectory.pdf. Laboratories are currently required to notify this same set of municipal health agencies when testing is performed for coliform and nitrate/nitrite. See the rules governing the certification of laboratories and environmental measurements at N.J.A.C. 7:18-4.6(k) and 5.6(i). The Department has had no indication that this has been a problem for the laboratories to date, and therefore does not anticipate problems in the future.

150. COMMENT: DEP deserves credit for going beyond the minimum requirements of the law by requiring labs to notify local health authorities and the test requestor of acute violations within 24 hours. (31, 39)

RESPONSE: The Department appreciates this comment in support of the rules.

151. COMMENT: In order for local health authorities to make the best use of data generated through this rule in terms of building GIS groundwater quality databases, it is important that both "passing" and "failing" test results be provided electronically. We recommend that DEP set up the notification protocols accordingly. (2, 13, 37, 46)

RESPONSE: The Department intends to provide all test results, both passing and failing, electronically to the appropriate local health authority, as soon as this is practicable.

152. COMMENT: Will the laboratories be required to report MCL exceedances to the hotline, since they have to notify the CEHA agency within 24 hours, while the DEP must notify within 5 days? The current policy is to report by site name and address -- does this conflict with the confidentiality mandates in this regulation? (37)

RESPONSE: The commenter appears to be referring to the requirement in N.J.A.C. 7:9E-4.1 that certified laboratories report MCL exceedances to the local health authority within 24 hours. Laboratories are not required to notify the NJDEP 24-Hour Environmental Incident Hotline in these circumstances. The Department will obtain this information through the Private Well Water Test Reporting Form.

153. COMMENT: There seems to be a conflict between N.J.A.C. 7:9E-4.1(c) and 7:9E-4.2 in regard to public notification and "sole discretion" of the health authority regarding public notification. (16)

RESPONSE: The health authority has sole discretion over whether to issue a notice, and the form in which it is issued. See N.J.A.C. 7:9E-4.1(c) and 4.2(a). However, if the health authority chooses to issue a notice, N.J.A.C. 7:9E-4.2(b) requires that it shall at a minimum be provided to all property owners within 200 feet of the subject property.

154. COMMENT: N.J.A.C. 7:9E-4.1(c) states that the local board of health is authorized to notify property owners in the vicinity of the subject property and recommend that owners have nearby wells sampled. Is the department stating that this action should be taken prior to a confirming analysis? Is the department willing to state whom should be responsible to order the confirming sample: buyer, seller, State, County? (21)

RESPONSE: The decision of whether to issue a notice, as well as the decision of whether to wait for a confirming analysis before issuing such a notice, is within the sole discretion of the health authority. See N.J.A.C. 7:9E-4. The PWTA does not allow the Department to require additional testing during the period of validity of the original testing. See N.J.S.A. 58:12A-29d. Therefore, the question of who should be responsible for deciding whether a confirming analysis should be performed is beyond the scope of these rules.

155. COMMENT: N.J.A.C. 7:9E-4.1(c): If a health department issues a notice to adjacent homeowners, and they are required to test their wells, who is responsible for payment if they come up clean? For that matter, with naturally-occurring substances, who is responsible if they come up contaminated? (18, 23, 28, 32, 38, 42, 44)

RESPONSE: Neither the PWTA nor these rules require adjacent homeowners to test their wells. If a local health authority chooses to issue a notice in accordance with N.J.A.C. 7:9E-4.1(c), the health authority may choose to suggest or recommend that adjacent homeowners test their wells, in accordance with the confidentiality requirements of the PWTA and these rules. However, the decision of whether to issue a notice, and of whether to include in that notice a recommendation that adjacent wells be tested, is within the sole discretion of the local health authority. Therefore, the question of who is responsible for paying for testing in the event that a local health authority chooses to issue a public notice and adjacent homeowners choose to test their wells is beyond the scope of these rules.

156. COMMENT: What specific actions are to be undertaken by local health departments (not the health authority), if any, regarding follow up for failing wells, since remediation of the wells is not required? (16)

RESPONSE: It appears that the commenter is drawing a distinction between local health authorities, as defined at N.J.A.C. 7:9E-1.2, and local agencies that do not meet this definition. Regardless of whether a local agency meets the definition of a local health authority, any action taken in response to a failed well test is solely within the discretion of the agency. Moreover, as stated at N.J.S.A. 58:12A-34, "Nothing in this act shall be construed to limit or preempt the authority of a county, county health Department, health agency, or designated health officer from making or causing to be made such inspection and testing of a water supply as may be necessary to ensure the health and safety of the residents of the State."

157. COMMENT: These regulations seem destined to lead to litigation in neighborhoods, regardless of whether the results will be kept confidential. All the neighbors need to do is (1) look to see whose home is for sale, and (2) look to see which neighbors have been notified. Then, as people start to see their property values decline, the lawsuits should start flying. (18, 23, 26, 28, 32, 38, 42, 44)

RESPONSE: The PWTA allows for notification at the discretion of the health department. Issues arising from the potential for neighbors deducing the location of a failed well test, or from the possibility of litigation, are beyond the scope of the rules adopted herein.

158. COMMENT: N.J.A.C. 7:9E-4.1(b) -The Department is not correct in stating the "...local health agencies have the discretionary authority to provide notice to neighboring property owners." If the local health agency knows of contamination in a well, it is required to investigate, notify the adjacent property owners their well may be contaminated and take all necessary steps to protect the residents in the area. (33)

RESPONSE: By stating that the local health agencies have discretionary authority to provide notice, the Department reiterated the provisions of the PWTA. See N.J.S.A. 58:12A-31.

159. COMMENT: In this world of litigation, how can a Board of Health or a County Health Department not notify surrounding property owners if there is a well that has failed? (50)
RESPONSE: Questions regarding potential litigation are beyond the scope of these rules.

N.J.A.C. 7:9E-4.2 Criteria for public notification

160. COMMENT: The rules should be consistent in making a requirement for notification or not. Making it discretionary is a disservice to the public and they should be parameter specific. (9)
RESPONSE: Please see the response to comment 161, below.
161. COMMENT: The proposed regulation states that the health authority may or may not choose to notify residents within 200' of a failing test. The option for each health authority or board of health to choose differently will lead to inconsistencies across the state. Adjacent townships may have differing guidelines, therefore leading to confusion between residents and Realtors. Additionally, the parameters for which a health authority chooses to initiate a notification process may differ. For example, a failing total coliform result may be indicative of an internal plumbing issue and not a widespread pollution problem. Notification on an elevated volatile organic compound may be a better standard. (26)
RESPONSE: Response to comments 160 and 161: The PWTA states that "It shall be at the sole discretion of the county health department, health agency, or designated health officer, as appropriate to each county, whether or not to issue such a notice and to whom and by what means it shall be given." N.J.S.A. 58:12A-31 (emphasis added). The PWTA charges the Department with establishing "criteria for notification which may include, but shall not be limited to, the level of exceedance recommended for notification, and the distance or location of the properties in the vicinity of the contaminated well for which testing is recommended." N.J.S.A. 58:12A-31. The Department has established these criteria (including the 200 foot minimum) at N.J.A.C. 7:9E-4.2.
162. COMMENT: The surrounding property owners must be told and 200 feet is a very, very small area to consider because we all know how water travels. (50)
RESPONSE: Please see the response to comment 165, below.
163. COMMENT: The proposed 200' notification distance criterion seems arbitrary. Appropriate notification distances will vary for different parameters and geologic conditions. Science-based distance criteria should be provided. (14)
RESPONSE: Please see the response to comment 165, below.
164. COMMENT: The 200 foot minimum distance from property boundaries for public notification of neighboring properties is too short. It is inconsistent with the Department's policies in the Bureau of Site Remediation and the Spill Fund Office, which use a 1,000 foot distance as their criterion not only for notification, but also for triggering groundwater investigations and for remedial considerations. Moreover, in rural areas--which constitute

the majority of private well water users--a 200 foot notification distance would include very few neighboring properties, often only one or two houses. This will pose great challenges in maintaining the confidentiality requirements. Additionally, instances of private well contamination in neighborhoods often extend well beyond 200 feet, with sporadic patterns that frequently "skip" adjacent properties and impact other wells several hundred feet away. A 200 foot minimum notification distance will miss significant contamination. We recommend a minimum of 1000 feet from each boundary of the subject property. (25)

RESPONSE: Response to comments 162 through 164: As noted by the commenter, the 200 foot distance is a minimum, intended to ensure that any notice issued will reach those most likely to be affected. In addition, municipalities already generate lists of properties within 200 feet in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. A requirement to generate lists of properties within any other distance may put a significant data management burden on some municipalities. Each local health authority has the discretion to provide notice to properties in a wider area, should the authority believe this necessary for confidentiality or public health reasons.

165. COMMENT: This proposal offers a confusing procedure for the local health authorities. (26)

RESPONSE: The rule has been clarified on adoption by revising the titles of N.J.A.C. 7:9E-4.1 and 4.2 to clarify which requirements apply to the local authorities. Also, N.J.A.C. 7: 9E-4.1(c) has been relocated upon adoption at 4.2(a). Finally, a reference to N.J.S.A. 58:12A-31 is being deleted on adoption, and replaced with the actual language from that statutory provision.

166. COMMENT: How will the DEP Geological Survey provide assistance in determining the area of notification (radius) based on well depth, geology, contaminant time of travel, and direction of ground water flow? (37)

RESPONSE: The information sought by the commenter is detailed and site-specific. The intent of this rule is to provide a minimum standard for public notification. Any additional investigation or notification that occurs beyond this initial notification will take place on a case-by-case basis.

167. COMMENT: Can you make available prior to the close of public comment the "recommended situations" discussed at N.J.A.C. 7:9E-4.2. (31, 39)

RESPONSE: The rules state at N.J.A.C. 7:9E-4.2(b)1 that the recommended situations which may warrant notification are available from the Department for local health authorities, for advice purposes only. The Department plans to work in consultation with local health authorities to develop guidance and examples for health officers regarding recommended situations which may warrant public notification. The Department will make this guidance available when it is completed.

SUBCHAPTER 5. CONFIDENTIALITY OF INFORMATION SUBMITTED PURSUANT TO THIS CHAPTER

N.J.A.C. 7:9E-5.1 General requirements

168. COMMENT: Why is it that these results must remain confidential, especially in the current climate of ever increasing freedom of information acts? (5)

RESPONSE: Please see the response to comment 173, below.

169. COMMENT: Based on our experience with water testing, there is no reason for these results to be confidential. If the local health agency knows of a contamination in a well, the agency has to notify adjacent property owners, who need to know the location of the problem well in order to make informed decisions. Whoever has the "confidential" well location should release it for investigation purposes, and those notified will demand this information. The confidentiality requirement should be removed from the law. (15)

RESPONSE: Please see the response to comment 172, below.

170. COMMENT: The Private Well Testing act conflicts with the State housing code. For municipalities that have adopted that code, if the Health Department receives a report of unacceptable well water quality in a residential dwelling and issues a notice of violation, such notice becomes a public record, and this would be in conflict with the confidentiality provisions in the proposed rules (and law). (48)

RESPONSE: Please see the response to comment 172, below.

171. COMMENT: Are the confidentiality provisions in these regulations consistent with the recent legislative changes to New Jersey's Freedom of Information Act? (37)

RESPONSE: Please see the response to comment 172, below.

172. COMMENT: N.J.A.C. 7:9E-5.1 seems to be in direct conflict with the new Public Access Law. (16)

RESPONSE: Response to comments 168 to 172: The PWTA requires confidentiality of well test results (N.J.S.A. 58:12A-31a), and specific information regarding the location of the well (N.J.S.A. 58:12A-31b). Specifically, the PWTA states that "[N]otwithstanding the provisions of P.L. 1963, c. 73, c.47:1A-1 et seq. or any other law to the contrary, water test results received by the Department of Environmental Protection, a county health department, health agency, or designated health officer, or any other State or local governmental entity, in compliance with or as authorized by this act shall be confidential and shall not be open for public examination, inspection, or copying, except that general compilations of water test results data arranged or identified by county and municipality or appropriate geographic areas therein, which do not include specific address or location information, may be made available to the public." This is found in these rules at N.J.A.C. 7:9E-5. The Open Public Records Act provides that the confidentiality provisions of other statutes shall remain in effect. See N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-9. The Department and other agencies are required to comply with the PWTA. Specific

determinations concerning the applicability of the confidentiality provisions of the PWTA and other laws will be addressed by each particular agency as individual issues arise.

173. COMMENT: The requirement to keep the records confidential will cause a problem with filing. In many health departments, property records are open for public review. Creating a separate database and filing system will result in an increase in workload and added expenses. Additionally, filing is often performed by part-time help who are unfamiliar with the regulations, increasing the risk that the reports may be inadvertently misfiled. I agree that the property should not be identified in a mass mailing; however, the results should be part of the property file. (26)

RESPONSE: The Department is not requiring county and local government entities to develop a separate filing system solely for the storage of well test results submitted for compliance under the Private Well Testing Act Rules. The Department will provide local government agencies with electronic access to the Department's PWTA database for test results in their jurisdiction. Government entities that choose to store well test results within their own property files must meet the confidentiality requirements of the Private Well Testing Act and the Private Well Testing Rules.

174. COMMENT: N.J.A.C. 7:9E-5.1(a): Are the laboratories required to keep the results confidential? How about potential buyers, realtors, or other interested parties? (18, 23, 28, 32, 38, 42, 44)

RESPONSE: The PWTA, at N.J.S.A. 58:12A-30(e), states that "A laboratory shall not release water test results to any person except the buyer and seller of the real property at issue..., the lessor of the real property..., any person authorized by the buyer, seller, or lessor, as the case may be, the Department of Environmental Protection, or any person designated by court order." The PWTA is silent concerning the applicability of the confidentiality provision on any other parties besides those especially mentioned.

175. COMMENT: The rule should/must be strengthened so that N.J.A.C. 7:9E-5.1(b) reads "Reasonable requests for g[G]eneral compilations ...[may] shall be made available to the public." As currently drafted, it violates the last paragraph of section 8 of the Private Well Testing Act, which says that information "shall be made available to the public." (31, 39)

RESPONSE: N.J.A.C. 7:9E-5.1(b) is taken from PWTA language at N.J.S.A. 58:12A-31(b), which allows, but does not require, the Department and other agencies to make available general compilations of water test results data. An additional provision has been added on adoption at N.J.A.C. 7:9E-5.1(c), to reflect the PWTA language at N.J.S.A. 58:12A-33 to which the commenter refers, which requires the Department to provide a general compilation of water test results data.

176. COMMENT: Amend N.J.A.C. 7:9E-5.1(a) to read "... or copying, except as provided for at N.J.A.C. 7:9E-5.1(b)." (31, 39)

RESPONSE: A change similar to that suggested has been made on adoption.

177. COMMENT: There is need for state guidance in how information gathered through this Act can be effectively shared with the public while at the same time not violating the

confidentiality provisions. This document should explain, for instance, how maps can be developed to show impacted areas without violating N.J.A.C. 7:9E-5.1. (2, 13)

RESPONSE: The Department intends to develop guidance for both State and local government agencies on how the data can be presented in the most useful manner within the confines of the confidentiality requirements of the Private Well Testing Act and the rules.

178. COMMENT: It is important to know where the wells are so that we do not overburden the aquifers. It would be very helpful if the municipalities could take advantage of the GPS locating that is going to be done in the process of testing the wells. Just dots on the map would help us tremendously. We can get the depth from the county board of health. (29)

RESPONSE: In accordance with the PWTA, the Department will make available to the public a general compilation of water test results data arranged or identified by county and municipality or appropriate geographic areas therein, but which does not include specific address or location information. The Department intends to provide as much information as it can regarding well data in accordance with the confidentiality requirements imposed by the statute. To provide specific well locations, despite the fact that well test results will not be provided with them, may compromise the confidentiality requirements of the PWTA.

179. COMMENT: (pH testing in N.J.A.C. 7:9E-2.2(a)): The regulations should provide for a simple certification that allows qualified health department personnel to independently measure field pH and other simple "analyze immediately" parameters. (14)

RESPONSE: While we appreciate the commenter's concern regarding certification of health officers, the process for becoming certified to analyze for pH and other analyze-immediately parameters is simple and not burdensome. This process can be used to allow qualified health department personnel to perform the tasks discussed by the commenter. Information on becoming certified can be obtained by contacting the Department's Office of Quality Assurance at (609) 292-3950.

Summary of Agency-Initiated Changes:

1. The definition of "alternate direct water consumption sample location" has been deleted upon adoption because this term is no longer used in the rules. It was used only in proposed N.J.A.C. 7:9E-2.3(a)4, which has been deleted upon adoption (see below for an explanation of this deletion).
2. Clarifying changes to the definition of "Global Positioning System" and to N.J.A.C. 7:9E-3.1(a)1xi (recodified upon adoption at N.J.A.C. 7:9E-3.1(a)1x) have been made upon adoption. First, a more specific citation to the Department's GIS rules has been added in both locations, to more specifically reference the Department's standards for GPS coordinates. Second, specific language regarding the location of GPS coordinate collection has been removed from the definition, because it is redundant with language adopted at N.J.A.C. 7:9E-3.1(a)1x. Finally, as discussed in the response to comment 137, language is added at N.J.A.C. 7:9E-3.1(a)1x (proposed at N.J.A.C. 7:9E-3.1(a)1xi) to allow for collection of GPS coordinates at a location other than a front door or well head in certain situations.

3. N.J.A.C. 7:9E-2.3, which addresses sample location, has been reworded for clarity and brevity, and several provisions have been recodified for ease of understanding.
 - N.J.A.C. 7:9E-2.3(a)1, which addresses where water samples shall be collected, has been modified for clarity on adoption. First, introductory language is added to clarify that (a)1 addresses water systems without treatment units. Second, the phrase "used for consumption from" has been deleted. This phrase is confusing because, in cases where a treatment system has been installed on the water system, it could be construed to require testing of a treated water sample. However, the rules require testing of untreated samples in all cases.
 - In N.J.A.C. 7:9E-2.3(a)2, the terms "point of delivery water treatment device" and "point of use water treatment device" are replaced by the more general term "water treatment system," because this includes both of the replaced terms. In addition, the option of sampling before a treatment system, rather than disconnecting or disabling the treatment system, is added at new N.J.A.C. 7:9E-2.3(a)2ii.
 - Proposed N.J.A.C. 7:9E-2.3(a)3 has been deleted upon adoption because the same situation is addressed at N.J.A.C. 7:9E-2.3(a)2 as adopted.
 - Proposed N.J.A.C. 7:9E-2.3(a)4 has been deleted upon adoption to simplify the section. This provision discusses various locations for collecting samples. However, the provision is unnecessary because the specific location of sample collection does not matter, provided any treatment system is disabled, or the sample is collected prior to any treatment system.
 - Proposed N.J.A.C. 7:9E-2.3(a)5 has been recodified upon adoption at N.J.A.C. 7:9E-2.3(b), for ease of understanding. In addition, the final two sentences of the provision have been deleted upon adoption, because they implied that coliform and lead were not subject to testing under the chapter.
 - Proposed N.J.A.C. 7:9E-2.3(a)6 has been deleted upon adoption because it covers, more generally, the information found in the adoption at N.J.A.C. 7:9E-2.3(c) (proposed at N.J.A.C. 7:9E-2.3(a)6i).
 - Proposed N.J.A.C. 7:9E-2.3(a)6i is recodified upon adoption as N.J.A.C. 7:9E-2.3(c). In addition, as discussed above in the response to comment 126, a sentence has been added upon adoption regarding how long to flush the plumbing system before collecting a lead sample.
 - As discussed in the response to comment 48, N.J.A.C. 7:9E-2.3(a)7 has been deleted upon adoption in order to avoid confusion.
4. Proposed N.J.A.C. 7:9E-3.1(a)1, which introduces the list of information that laboratories are required to report, has been clarified upon adoption for easier understanding.
5. In N.J.A.C. 7:9E-3.1(a)1xvi and 3.2(b), the term "quality assurance officer" is replaced with "designee". This more accurately reflects the Department's process by which a laboratory may assign someone to submit a certification to the Department, and to obtain an electronic access code for purposes of reporting to the Department.
6. In N.J.A.C. 7:9E-3.2(b)1, the term "website" is replaced with the term "electronic website portal", for clarity.
7. Proposed N.J.A.C. 7:9E-3.3(c), which is taken from a PWTA provision providing for a buyer and seller to mutually agree to test a well that was previously tested, is unnecessary and is

being deleted on adoption. This provision addresses issues between parties to a real estate transaction, which are beyond the scope of these rules.

8. Proposed N.J.A.C. 7:9E-3.3(d) is being deleted on adoption. The substance of (d)1 has been relocated on adoption into N.J.A.C. 7:9E-3.3(a) and (b). The substance of (d)2 is not relevant to the testing of untreated water and therefore is being deleted.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L.1995, c.65) require State agencies that adopt, readopt or amend State regulations that exceed any federal standards or requirements to include in the rulemaking document a federal standards analysis.

The Private Well Testing Act, which became law in March, 2001, applies to buyers, sellers and lessors of certain real property as follows:

1. All contracts of sale for any real property the potable water supply for which is a private well located on the property, or for any other real property whose potable water comes from a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, include a provision requiring, as a condition of the sale, the testing of that water supply for certain parameters.

2. By March 14, 2004 (Editors note: the rule proposal at 34 N.J.R. 1608 erroneously stated this date as February 14, 2004. However, the date is required by the PWTA to be March 14, 2004), the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, test that water supply for certain parameters at least once every five years and, within 30 days after receipt of the test results, provide a written copy of the results to each rental unit and each new lessee.

The rules adopted herein establish water test parameters and requirements for the collection, analysis, and submittal of test results, for compliance with the Private Well Testing Act, by laboratories certified under the Department's Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18. In addition, these rules establish procedures and requirements for maintaining the confidentiality of any information submitted pursuant to the Private Well Testing Act and this chapter. There is no comparable federal law regarding the testing of the drinking water quality supplied by wells subject to this Act.

Full text of the adoption follows (additions to proposal indicated in bold face with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

7:9E-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

[“Alternate direct water consumption sample location” means a sample location where there is access to potable water obtained from a part of the plumbing system other than a kitchen or bathroom tap or spigot.]

...

“Global Positioning System (GPS) location” means *[the]* *a* specific geographic location *[of a well head or front door of a building subject to this chapter]* as determined by satellite radio signals *[usually determined with an accuracy of several meters]*. All GPS data coordinate locations must be collected and reported in accordance with Department standards *for GPS data,* N.J.A.C. 7:1D *, Appendix A* *[for example, New Jersey State Plane Coordinate System (NJSPCS)]*.

...

“Local health authority” means a county, regional or municipal health agency that serves as the lead point of contact with the Department on environmental issues. This agency would ordinarily be the local health agency certified pursuant to the County Environmental Health Act (CEHA), N.J.S.A. 26:3A2-21 et seq. In those counties that do not have a certified *[local]* *CEHA* health agency, the local health authority *is the agency* that serves as the lead for administering the Local Information Networks and Communication System (LINCS) as designated by the Department of Health and Senior Services.

...

SUBCHAPTER 2. SAMPLING AND TESTING REQUIREMENTS

7:9E-2.1 Parameters for which testing is required

(a) Each water sample shall be analyzed for the following parameters:

1. Total coliform bacteria;
2. * If the sample tests positive for total coliform bacteria, the sample shall be analyzed for either fecal* *[Fecal]* coliform or Escherichia coli *, in accordance with N.J.A.C. 7:18-4.6*;
3. Nitrate;
4. Iron;
5. Manganese;

6. pH;
 7. All volatile organic compounds for which maximum contaminant levels (MCLs) have been established under the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and implementing rules, N.J.A.C. 7:10; and
 8. Lead.
- (b) (No change from proposal.)
- (c) In addition to the parameters listed at (a) above, water samples collected from Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, *[Sussex,]* *and* Union *[, and Warren]* county locations shall be analyzed for arsenic.
- (d) (No change from proposal.)

7:9E-2.2 Collection requirements

(a) Water samples subject to this chapter shall be collected by either a New Jersey certified laboratory or the laboratory's authorized representative, as defined at N.J.A.C. 7:9E-1.2. The sample collector who analyzes for pH shall be *an employee of a* certified *environmental laboratory, as defined at N.J.A.C. 7:18-1.7, which is certified to analyze for pH* *[as set forth in]* the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18.

(b) (No change from proposal.)

7:9E-2.3 Sample location

(a) Water sampling locations for compliance with this chapter shall be as follows:

1. *[Samples]* *If there is no water treatment system, as defined at N.J.A.C. 7:9E-1.2, in use on the subject property, samples* shall be collected from a primary cold water, non-aerated spigot or tap *[used for consumption from]* *that draws from, or feeds water to,* the potable water system of the subject property.
2. Where a *[point of delivery water treatment device or point of use]* water treatment *[device is located on the spigot or tap, the device]* *system is in use on the subject property, the sample shall be collected as follows:
 - i. The water treatment system* shall be disconnected or otherwise disabled prior to the collection of the water sample *; or
 - ii. The sample shall be collected at a location prior to the water treatment system.*

*[3. Where a point of entry treatment device is used to treat the drinking water entering the subject property, the device shall be disconnected or otherwise disabled prior

to the collection of the water sample, or the sample shall be collected at a location prior to the point of entry treatment device.

4. If there is no spigot or tap on the subject property, the water sample shall be collected from an appropriate alternate direct water consumption location, as defined at N.J.A.C. 9:E-1.2.

i. If the location of the sample is deemed inappropriate by the Department, an additional water sample shall be collected and analyzed in accordance with this chapter.

(A) Unacceptable water sample locations include outdoor spigots, locations before the storage tank, and outlets directly at the well head except as provided at 4. below.]*

[5.] *(b)* In the case of new well construction and installation where there is no spigot or tap on the subject property, the sample may be collected directly at the well head (raw water sample) as set forth in the Safe Drinking Water Act rules at N.J.A.C. 7:10-12.30. *[Raw water samples shall be analyzed for parameters set forth in this chapter, with the exception of coliform and lead. Coliform and lead water samples shall be collected as set forth in 5. below.

6. Water samples collected for coliform and lead analyses shall be collected from a cold water, non-aerated spigot or tap or an alternate direct water consumption sample location defined at N.J.A.C. 7:9E-1.2.]*

[i. Before] *(c) In addition to the requirements set forth at (a) and (b) above, before* a water sample for lead analysis under this chapter is collected, water shall be flushed through the plumbing system *for at least two minutes (* until *[a significant change in]* *the* water *changes* temperature *[has occurred]* *)*, in accordance with N.J.A.C. 7:18.

[7. Water samples collected pursuant to this chapter as part of a well re-test shall be collected at the same location as the original water sample, unless collection at a different location is specifically authorized or directed by the Department.]

SUBCHAPTER 3. REPORTING AND DATA VALIDITY

7:9E-3.1 Reporting requirements *for laboratories*

(a) The reporting laboratory shall, subject to (c) below, within five business days after completion of analyses of water samples:

1. Provide the following information to the person(s) who requested the test *. The information shall be provided* on the Department's "Private Well Water Test Reporting Form" *, which is* available by logging on to the Department's website at *[www.state.nj.us/dep/watersupply/pwta]* *www.state.nj.us/dep/PWTA*; and or *by*

contacting the *Department's Hotline for Private Well Testing Act Program Hotline*
[Bureau of Safe Drinking Water at 609-292-5550]. The form shall include the following information* :

- i. Name *, telephone number,* and mailing address of person(s) who requested the test;
- ii. - xi. (No change from proposal.)
- xi. Global *[Position]* *Positioning* System (GPS) location*[,]* *of the well head or front door of the subject property, or if GPS coordinates cannot be collected at one of those locations, at another location on the subject property, as close as possible to the well head or front door. GPS data shall be* obtained in accordance with Department standards, N.J.A.C. 7:1D, *set forth at Appendix A,* *[of the well head or front door of the property where the well exists]* and *shall include* a notation of which location was utilized*[.]* *,*
- xiii. - xiv. (No change from proposal.)
- xv. A statement of available remediation funding alternatives; *and*
- xvi. A written certification signed by the laboratory manager and/or *designee* *[laboratory quality assurance officer]* stating that all sampling, analyses and reporting performed by that laboratory comply with all requirements as set forth in this chapter and in Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18 and certifying that the laboratory is in compliance with all laboratory certification and quality control procedures and requirements as set forth in N.J.A.C. 7:18.
 - (1) (No change from proposal.)
- xvii. A statement providing that additional information may be obtained by logging onto the NJDEP-Private Well Testing Act website at *[www.state.nj.us/dep/watersupply/PWTA]* *www.state.nj.us/dep/pwta*; and or contacting the Department's Bureau of Safe Drinking Water at 609-292-5550; *[and]*
- xviii. *[A statement]* *One or more of the following statement(s), as applicable,* at the top of the form prior to listing the individual results as follows:

(A) If all analytical results meet applicable standards the statement shall say:
"Analytical results meet *[recommended]* *primary and secondary contaminant* standards for drinking water."

(B) If one or more of the analytical results fail to meet applicable standards, the statement shall say: "One or more of the analytical results do not meet *primary contaminant* *[recommended]* standards for drinking water*[.] * * * "

(C) *If one or more of the analytical results fail to meet applicable standards, the statement shall say: "One or more of the analytical results do not meet secondary contaminant standards for drinking water."; and*

xix. (No change from proposal.)

2. Provide the following information to the Department electronically in accordance with N.J.A.C.7:9E-3.2:

i. (No change from proposal.)

ii. All data being submitted to the person(s) who requested the test pursuant to (a)li through xiv, above *[.] * * *

iii. - xv. (No change from proposal.)

xvi. A description of lead sample collection technique *[, for example, flushed, standing, etc]* .

(b) - (c) (No change from proposal.)

7:9E-3.2 Electronic data submittal

(a) (No change from proposal.)

(b) Prior to submitting data electronically to the Department, the laboratory manager and/or *[quality assurance officer]* *assigned designee* shall:

1. Register with the Department by accessing the Department's *electronic* website *portal, located* at www.njdeponline.com to obtain a Department issued personal identification number (PIN) as follows:

2. (No change from proposal.)

(c) - (d) (No change from proposal.)

7:9E-3.3 Data validity for sale of subject property

(a) Analytical results except for coliform (total and fecal) shall remain valid for purposes of complying with Section 2 of the Act (N.J.S.A 58:12A-27) for a period of one year from the date of sample collection *except if a new source of water has been installed, in which case the test results shall no longer be valid*.

(b) Coliform (total and fecal) analytical results shall remain valid for purposes of complying with Section 2 of the Act (N.J.S.A 58:12A-27) for a period of six (6) months from the date of sample collection *except if a new source of water has been installed, in which case the test results shall no longer be valid *.

*(c) A buyer and seller may mutually agree to re-test for one or more parameters even though the maximum time period for test validity established pursuant to (a) or (b) above has not expired.

(d) If the subject property is resold within the period of test validity established by (a) or (b) above, the original water test results may be used during the subsequent real estate transaction provided that:

1. A new source of water has not been installed; or
2. A change in the water treatment system has not occurred.]*

SUBCHAPTER 4. NOTIFICATION PROCESS

7:9E-4.1 Notification *[requirements]* *by laboratories and the Department*

(a) - (b) (No change from proposal.)

(c) The appropriate local health authority, upon the Department's notification that the reported presence of one or more parameters exceed the MCLs, water quality standards, or action levels, is, in accordance with N.J.S.A. 58:12A-31, authorized to issue a public notice to owners of property in the vicinity of the subject property, and recommend that property owners have nearby wells sampled for the failed parameter(s).]

7:9E-4.2 *[Criteria for public]* *Public* notification *by local health authorities*

(a) The appropriate local health authority, upon the Department's notification that the reported presence of one or more parameters exceed the MCLs, water quality standards, or action levels, is authorized to issue a public notice to owners of property in the vicinity of the subject property, suggesting or recommending that property owners may wish to have nearby wells sampled for the failed parameter(s). The specific address or location of the private well that failed a water test shall not be identified in the notice or by any other means or in any other manner.

[(a)] *(b)* (No change from proposal.)

[(b)] *(c)* (No change from proposal.)

[(c)] *(d)* (No change from proposal.)

SUBCHAPTER 5. CONFIDENTIALITY OF INFORMATION
SUBMITTED PURSUANT TO THIS CHAPTER

7:9E-5.1 General requirements

(a) An appropriate local health authority, or any other local or State entity, shall keep confidential all information submitted or received pursuant to this chapter and the Act and shall not make any such information available for public examination, inspection or copying *except pursuant to (b) or (c) below*.

(b) *[General]* *The Department, a county health department, health agency, or designated health officer, or any other State or local governmental entity may make available to the public* compilations of test results organized according to municipality and county and/or geographic regions *[which do]* *. Such compilations shall* not provide the names of specific property owners, their addresses or locations *[, may be made available to the public]* .

[(c)] The Department shall make available to the public a general compilation of water test results data, arranged or identified by county and municipality or appropriate geographic areas therein. Such general compilations shall not include specific address or location information.*

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) permit the public to accurately and plainly understand the purposes and expected consequences of these rules. I hereby authorize the adoption of these new rules.

Date: 8/23/02

/S/
Bradley M. Campbell
Commissioner
Department of Environmental Protection